

2:22-cr-00030-RFB-DJA

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
) Case No. 2:22-cr-00030-RFB-DJA
Plaintiff,)
) Las Vegas, Nevada
vs.) Wednesday, May 29, 2024
) 8:24 a.m.
KRISTOPHER LEE DALLMANN, (1))
DOUGLAS M. COURSON, (3)) JURY TRIAL - DAY 2
FELIPE GARCIA, (4)) A.M. SESSION
JARED EDWARD JAUREQUI, (5))
PETER H. HUBER, (6),) **C E R T I F I E D C O P Y**
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See Pages 2 and 3

COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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1 LAS VEGAS, NEVADA; WEDNESDAY, MAY 29, 2024; 8:24 A.M.

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3 P R O C E E D I N G S

4 THE COURT: Please be seated.

5 COURTROOM ADMINISTRATOR: The matter now before the

6 Court is the *United States of America versus Kristopher Lee*

7 *Dallmann, et al.*, Case Number 2:22-cr-030-RFB-DJA.

8 Counsel, please make your appearances, beginning with
9 the Government.

10 MR. CHRISTIN: Good morning, Your Honor. Michael

11 Christin for the United States and my colleagues: Chris

12 Merriam, Edward Veronda, and Jessica Oliva.

13 THE COURT: Good morning.

14 MR. MERRIAM: Good morning, Your Honor.

15 MR. BROWN: Oh, do you want to start our new --

16 THE COURT: No, that's all right.

17 MR. BROWN: Okay. Good morning, Your Honor. William

18 Brown and Christopher Mishler for Mr. Felipe Garcia, who's

19 present. Also with our team is Lisa Smith.

20 THE COURT: Okay. Good morning.

21 MR. MARSH: Good morning, Your Honor. Russell Marsh

22 and Sunethra Muralidhara, along with our client, Jared Jaurequi,

23 who is present and at liberty.

24 THE COURT: Good morning.

25 MS. BLISS: Good morning, Your Honor. Kathleen Bliss

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1 with Mr. Huber and Mr. Chatterjee.

2 THE COURT: Good morning.

3 MR. TATE: Good morning. Kevin Tate present with
4 LaRonda Martin and Rick Mula from the Federal Defender's Office,
5 Nikki Seubert, our assistant, and plus Mr. Dallmann appears in
6 person.

7 MS. ARMENI: Good morning, Your Honor. Paola Armeni
8 and Austin Barnum on behalf of Douglas Courson, who is present
9 and out of custody.

10 THE COURT: Okay. Good morning.

11 So I wanted to come out so we could discuss the
12 demonstratives.

13 Mr. Christin, why don't we just start off going through
14 what you're going to show.

15 MR. CHRISTIN: Yes, Your Honor.

16 THE COURT: I have it up on my screen. I have the
17 first one. And we did receive the objections, so I want to go
18 through them.

19 So the main objection appears to be to this -- there's
20 a foundational objection, I believe, as it relates to this
21 particular notice. So explain to me what this is and how it
22 comes in.

23 MR. CHRISTIN: Thank you, Your Honor.

24 This notice was seized from Mr. Dallmann's residence on
25 the date of the search warrant of November 16th of 2017. This

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1 is going to come in through Special Agent Cox, who will be
2 testifying -- scheduled to testify likely tomorrow.

3 Mr. Dallmann also mentions this letter when he was interviewed
4 by the FBI on that same day. He noted that he received a cease
5 and desist letter from HBO.

6 So the purpose of this would be to show the effect on
7 the listener, not -- so this would not be hearsay. And also, it
8 is a command. It is demanding Mr. Dallmann stop infringing
9 HBO's content, and the effect on the listener is that he did not
10 do that. He continued to stream HBO's content, and we know that
11 because Special Agent Cox streamed HBO content five years after
12 this letter was sent.

13 THE COURT: So the purpose of this is to show that he
14 received this information, not for the truth of the matter.

15 MR. CHRISTIN: Correct, Your Honor.

16 THE COURT: All right.

17 Mr. Tate?

18 MR. TATE: Your Honor, if you note at the time --

19 THE COURT: So let me start with this. Are you in any
20 way disputing the fact that this was found in Mr. Dallmann's
21 residence?

22 MR. TATE: No, no argument.

23 THE COURT: Okay.

24 (Court reporter interruption.)

25 MR. TATE: No, I'm not --

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1 THE COURT: He can raise -- he can raise the podium.

2 MR. TATE: No, I'm not --

3 THE COURT: The podium can be raised.

4 MR. TATE: Oh, okay.

5 THE COURT: So there's no foundational objection here,
6 right, because it was seized from his residence, right? And
7 they're saying it was -- that an agent will testify to that.
8 You're not disputing that, right?

9 MR. TATE: No, we're not.

10 THE COURT: Okay. So what is the issue, then?

11 MR. TATE: The issue is the use of it in opening
12 statements. Now, it might be authenticated, but is it really
13 admissible?

14 THE COURT: What's inadmissible about it? So that's
15 what I'm getting into. Like --

16 MR. TATE: Because it's offered by --

17 THE COURT: Let me stop you for a second.

18 State -- exhibits that may be admitted and the Court
19 finds they may be admitted certainly can be used in opening,
20 right? No exhibit is going to be admitted, obviously, not --
21 in, generally speaking, preopening. So for me, the question is,
22 is this a document that is likely to be admitted during the
23 trial?

24 So my question to you is, why wouldn't this document be
25 admitted during the trial? Because the law's pretty clear. If

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1 I think that a document is and will likely be admitted, then the
2 document can be used in the opening by any party. So why
3 wouldn't this document be admissible during the trial?

4 MR. TATE: Because it's offered by Steven Rosenthal,
5 who is not a witness. It's hearsay. And --

6 THE COURT: He's not offering it for the truth of the
7 matter. He's offering it for the fact that your client had it
8 in his possession, which means that it's not being offered for
9 the truth, so it doesn't make it hearsay, right?

10 MR. TATE: Is the Court going to so instruct the jury
11 on that?

12 THE COURT: What? That it's being offered for the fact
13 that he had it in his possession?

14 MR. TATE: Yes.

15 THE COURT: If you ask me to instruct that as relates
16 to this particular exhibit when it comes in, certainly.

17 MR. TATE: Yeah. And that it's not offered for the
18 truth of the matter asserted.

19 THE COURT: Well, we -- right. We can certainly say
20 the fact that the document says "notice of copyright
21 infringement" does not establish copyright infringement; that
22 it's offered for the fact that this document was received in
23 your client's -- was received by your client and was in his --
24 was in his residence. I'm certainly happy to give that
25 instruction when this document comes in, right?

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1 And so long as in the opening that's exactly how they
2 use it, that seems to me to be appropriate. If Mr. Christin is
3 saying, "Look, this document was found in Mr. Dallmann's
4 presence" -- excuse me -- "in his residence at the time," right,
5 "and even after this, he continued to operate the business,"
6 right, that's what it could be used for. And if you want the
7 instruction as relates to this particular document, I'm happy to
8 give it.

9 MR. TATE: Thank you.

10 THE COURT: So with that, is there any further
11 objection to it?

12 MR. TATE: No, other than we don't think it still
13 should be used in opening statements ahead of any evidence
14 being -- coming in.

15 THE COURT: So what law -- what law says that,
16 Mr. Tate? Because all of the law I've looked at says if a
17 document is going to be an admitted exhibit and there's no real
18 issue about it being admissible, the document can be used in
19 opening. So I'm not sure of case law that says --

20 MR. TATE: Well --

21 THE COURT: -- that the Court should keep out exhibits
22 that would be admitted. Now, if it wasn't going to be admitted,
23 that would be something different, but that's not what seems to
24 be the case here.

25 So is there any case law that tells me that I shouldn't

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1 allow exhibits in opening from either side if they're likely to
2 be admitted?

3 MR. TATE: The position that we've taken is --

4 THE COURT: The question is very specific.

5 MR. TATE: Yeah.

6 THE COURT: Is there case law that says the Court
7 cannot allow a party to use --

8 MR. TATE: I'm not aware of it. They say it's in the
9 Court's discretion.

10 THE COURT: Right. Okay. And you're saying that it
11 shouldn't be used in my discretion because?

12 MR. TATE: I don't see how the Court is going to give a
13 limiting instruction on the evidentiary purpose of this during
14 their opening statement. So I don't see an opportunity for the
15 Court to give the same limiting instruction during their opening
16 statement.

17 Certainly they can -- if the Court wants to admit it
18 over our objection and give that limiting instruction once it's
19 time to be put in and somebody can say, "We got this out of
20 Mr. Dallmann's house," then that's a difference than using it
21 ahead of time in an opening statement, which is just really
22 supposed -- it's not argument. It's supposed to be forecasting
23 the evidence in the case. I think this goes to -- to argument,
24 especially when they take the position that, well, it's not
25 being admitted for the truth of the matter asserted. It's being

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1 admitted for state of mind or whatever the reason was. That's
2 argument.

3 And so that's -- that's another reason why we don't
4 think it should be admitted during opening statements.

5 THE COURT: Okay. Thank you.

6 MR. TATE: Thank you.

7 THE COURT: Anyone else?

8 MR. MARSH: Your Honor, obviously our client has never
9 seen this and it doesn't relate to him, but I did notice
10 something on there that's troubling and I wanted to flag this
11 before the opening. But Steven Rosenthal is the director of
12 anti-piracy, and I would object to anybody using the term
13 "piracy" today or during the trial. I think that's
14 inflammatory. And the question is whether there was a
15 conspiracy to commit copyright infringement by reproduction, not
16 whether it was a pirate organization.

17 Thank you.

18 THE COURT: Well, Mr. Marsh, I guess my question is,
19 again, this document is being offered for the fact that
20 Mr. Dallmann had it and received it, right? And that goes to
21 state of mind, including the title. So I don't know if you have
22 any further response or you just wanted to make the record that
23 you did.

24 MR. MARSH: No, I don't, Your Honor. Thank you.

25 THE COURT: All right.

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1 Anyone else?

2 (No response.)

3 THE COURT: Okay. So, Mr. Christin, I take it when you
4 open on this document, you're still going to say that this was
5 found in his --

6 MR. CHRISTIN: Yes, Your Honor. I would intend to say
7 that this document was found in Mr. Dallmann's residence --

8 THE COURT: Residence.

9 MR. CHRISTIN: -- when they -- when they searched his
10 home and that it was a demand to stop infringing on copyrights
11 and he didn't do that.

12 THE COURT: Okay. All right. Let's move onto the next
13 document.

14 MR. CHRISTIN: Your Honor, with respect to this
15 document, this is somewhat similar in that the Government is
16 using it for the same purpose, to show that Mr. Dallmann
17 received this document. This is going to come in through
18 Mr. Guill, who personally hand-served this document on
19 Mr. Dallmann at 2154 Tona Circle. So this was not found in his
20 residence, but Mr. Guill will testify that he hand-served
21 Mr. Dallmann this document.

22 THE COURT: Okay.

23 MS. BLISS: Your Honor, is there a way for them to be
24 displayed on the monitors? I'm kind of at a --

25 THE COURT: Oh, it's not being displayed on your

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1 monitor?

2 (Defense counsel conferring.)

3 MS. BLISS: Yeah, I don't know how.

4 THE COURT: Well, it's not up to you, Ms. Bliss. We'll
5 figure out how we connect it. Just give us a moment.

6 MS. BLISS: Okay. I'm sorry.

7 THE COURT: That's all right.

8 MS. BLISS: In the meantime --

9 THE COURT: Well, let's see -- hold on. Wait, wait,
10 wait. Let's try to fix it.

11 MS. BLISS: Okay.

12 (Court conferring with courtroom administrator.)

13 MS. BLISS: All right. We're all set, Your Honor.

14 THE COURT: Okay.

15 MS. BLISS: Thank you.

16 THE COURT: Of course.

17 So, Mr. Tate, is it the same objection that you have?

18 MR. TATE: Yes. And one additional thing I think the
19 Court should be aware of is that while Mr. Guill was essentially
20 a process server, he was not the author of the document. The
21 author of the document is a Mr. Marc Miller. He's not
22 testifying in this case as far as we know. We think that the
23 document itself is hearsay in number -- and, really, because
24 they're -- the way they're -- they're -- shaped the case, notice
25 of infringement, it's really testimonial. And really the best

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1 evidence of that would be Marc Miller, and it may infringe on
2 the --

3 THE COURT: If it's being offered for the same reason,
4 which is for your client's state of mind, not for the fact that
5 it's true, but for the fact that he received it, then it
6 wouldn't be hearsay. We wouldn't need to have Marc Miller here.
7 We'd simply need to have here the person who can confirm that
8 your client received it, correct?

9 MR. TATE: Yes, that would -- that would just be that
10 he received it. So I guess the same limiting instruction would
11 be in order --

12 THE COURT: Uh-huh.

13 MR. TATE: -- and I just don't know -- it just seems
14 premature. I don't know how the Court would -- would do that
15 during their opening presentation.

16 THE COURT: Well, I wouldn't do it during the opening
17 presentation. I'd do it when the evidence came in. So I would
18 simply, when the evidence came in, say that this evidence is
19 offered for the -- is being admitted for the fact that it was
20 received, not for the truth of the matter. So while it says
21 "notice of infringement," it doesn't establish infringement. It
22 simply establishes the fact that the document was received.

23 And that's what -- the instruction the Court will give
24 when the document comes into evidence, which I think would
25 address any issue with this particular piece of evidence.

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1 So thank you, Mr. Tate.

2 MR. TATE: All right.

3 THE COURT: Anyone else? Mr. Mishler.

4 MR. MISHLER: Your Honor, yes. On behalf of
5 Mr. Garcia, the Government says that the foundation they're
6 going to lay for this is through Mr. Guill, who is going to say
7 that it was hand-delivered. If you look underneath the name,
8 Marc Miller, it says this was delivered via Federal Express and
9 e-mail. There's nothing on this document that would support
10 that. So I think there is some question whether --

11 THE COURT: If a witness comes in and says, "I
12 hand-delivered this," the fact that it was also delivered by
13 Federal Express and mail doesn't necessarily mean it wasn't also
14 hand-delivered, right?

15 MR. MISHLER: I understand that, Your Honor, but until
16 he lays that foundation, based on this document and what we're
17 seeing, there is some question on how it was delivered. So I
18 think it --

19 THE COURT: Well --

20 MR. MISHLER: -- would be presumptive to assume until
21 he testifies how --

22 THE COURT: But, Mr. Mishler, that would apply to any
23 piece of evidence that's used in opening; that until the actual
24 foundation is laid, it cannot be established, and that's of
25 course true unless it's stipulated evidence. But as far as I

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1 know, the law doesn't require that I find only stipulated
2 evidence can be used so long as I find that there's a likelihood
3 that the evidence would be admitted.

4 As far as I can see, it looks like Mr. Guill's going to
5 testify as to this coming -- excuse me -- as this being
6 delivered. So if that is the case, would there be an objection
7 as to that particular testimony?

8 MR. MISHLER: Your Honor, if he does testify to that,
9 then there wouldn't be an objection. The problem is, is showing
10 this in openings, you can't unring that bell if he later doesn't
11 testify or testifies not as the Government has represented. And
12 I have no reason to doubt the Government nor their
13 representation, but considering that testimony is going to come
14 weeks later, you're -- you're allowing the Government to show
15 something that there is a chance may not be admitted and you
16 can't unring it.

17 I have no problem if they want to discuss that there
18 also was this and we expect it to come in, but letting them see
19 it where there is a chance in this case where the testimony may
20 not be --

21 THE COURT: What is -- what is the chance? I guess
22 you're saying that, but do you have any information that would
23 suggest that Mr. Guill is going to testify otherwise?

24 MR. MISHLER: Not otherwise, but I've done trials and I
25 know the Government always expects all of their witnesses to

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1 testify, but in trial, things happen. There's always a chance
2 that this witness can't travel for some reason and so they just
3 exclude him as a witness, but it's too late. The Government --
4 the jury's already seen it. That's my only concern, Judge.

5 THE COURT: Okay. I appreciate that. Thank you.

6 Mr. Christin, next exhibit.

7 MR. CHRISTIN: And just for the record, Your Honor,
8 Mr. Guill is a local witness as well.

9 THE COURT: Okay.

10 MR. CHRISTIN: This is Exhibit 126, Your Honor. This
11 is an e-mail from PayPal which was preauthenticated when the --
12 when Your Honor granted the Government's motion in limine. This
13 is a certified business record from PayPal that was sent to
14 Mr. Dallmann at Jetflicks.com or Kris Dallmann at Jetflicks.com.

15 And, again, the purpose of this is to show that
16 Mr. Dallmann received this notice he could no longer do business
17 with PayPal, and he talks about this in his interview with the
18 FBI where he says that he sent PayPal documents, but couldn't
19 get the PayPal to do business with him anymore. So he pivots
20 and opens up a new account at a different payment processor,
21 which is where the next exhibit comes in.

22 And just so Your Honor is aware, there's going to be
23 some demonstratives -- not demonstratives, but some callouts
24 that just look like that so that the jurors can see the language
25 being used.

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1 THE COURT: Mr. Christin, are you going to talk about
2 what PayPal's Acceptable Use Policy is?

3 MR. CHRISTIN: I don't plan on talking about it in the
4 opening. I plan on talking about the fact that Mr. Dallmann
5 received a notice for violation of the Acceptable Use Policy,
6 one of those reasons potentially being infringement of
7 copyrights, and that PayPal refused to do business with him
8 anymore. And as a result of that, he had to go open up a new
9 account at a new payment processor and in doing so made false
10 representations to that processor about the type of business
11 that Jetflicks was.

12 THE COURT: Okay.

13 Mr. Tate?

14 MR. TATE: Thank you, Your Honor.

15 Again, this document here is really classic. It's
16 hearsay. It hasn't been admitted yet. I don't know how it goes
17 to his state of mind when they're talking about conclusory
18 comments made in a form letter from PayPal that says that it was
19 e-mailed to Mr. Dallmann. It doesn't put it in full context. I
20 think it's confusing. I think there has to be a foundation and
21 actually be admitted before they should be able to show it in
22 opening statements.

23 I just don't know if this is something that was
24 extracted during one of the computer searches or not. But the
25 fact that it was there doesn't --

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1 THE COURT: I'm sorry. When you say you don't know, I
2 thought that we already went through this. So let's separate
3 out what are the different arguments here. As far as I know,
4 this document was previously produced and we've discussed this,
5 right?

6 MR. TATE: I don't know we specifically discussed this
7 document, no.

8 THE COURT: But we discussed this category of
9 documents.

10 MR. TATE: Yeah.

11 THE COURT: Are you saying you've never seen this
12 document?

13 MR. TATE: No, I've seen the document.

14 THE COURT: Okay. And are you saying that this is not
15 Mr. Dallmann's e-mail?

16 MR. TATE: I see that on the document, yes.

17 THE COURT: Okay. So you're not disputing the fact
18 that this e-mail was sent to Mr. Dallmann based upon the Court
19 already having decided, sort of, the preauthentication of these
20 documents. What you're saying to me, as I understand it, is
21 that you think there is an issue with context of this document
22 and you think it's also hearsay?

23 MR. TATE: It's still hearsay, yes.

24 THE COURT: Okay.

25 MR. TATE: It's an out-of-court statement.

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1 THE COURT: Okay. Thank you, Mr. Tate.

2 MR. TATE: All right.

3 THE COURT: So, Mr. Christin, I -- my concern with this
4 document, in addition to that, is that there's not going to be
5 any explanation of the Acceptable Use Policy, and I think
6 there's an issue as it relates to what's being described here.
7 So I think that context is important for this particular
8 document. So I'm not going to allow this particular
9 demonstrative. If you want to mention the fact that this
10 happened, that they will learn of this, you can do that. But
11 I'm not going to allow this document to be used.

12 MR. CHRISTIN: Thank you, Your Honor.

13 And we will comply with that ruling. I will only note
14 for the record that a certified business record is -- is
15 excepted from the hearsay rule, so --

16 THE COURT: It's not that. It's not that,
17 Mr. Christin.

18 MR. CHRISTIN: I understand.

19 THE COURT: I'm not saying I'm not going to admit it.
20 What I am saying is in the opening, particularly when you're
21 using the callouts, what is the Acceptable Use Policy, what that
22 means, and how that's related to infringement, I think can be
23 particularly confusing when an exhibit is not admitted in its
24 context. And so for that reason, I'm not going to allow it, not
25 because I think you can't admit it later.

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1 MR. CHRISTIN: Understood.

2 THE COURT: So let's move on.

3 MR. CHRISTIN: We will remove it. Thank you.

4 THE COURT: Okay.

5 MR. CHRISTIN: The next exhibit, Your Honor, is
6 Exhibit 136.

7 So for context, when PayPal stopped doing business with
8 Mr. Dallmann, he needed a new payment processor, the company
9 did. And so they opened an account at Stripe. Stripe e-mailed
10 Mr. Dallmann and said, "We need to verify that that" -- "We need
11 to verify what your business is, and we went to go visit your
12 website, and it's password-protected. We need to see the
13 contents of your website before we can do business with you."

14 So four days later, Mr. Dallmann sent this e-mail to
15 coconspirator, Mr. Vaillant. And these images were used in the
16 creation of a fake website to trick Stripe into thinking that
17 Mr. Dallmann's business was, in fact, an aviation services
18 business rather than the streaming business that -- that he was
19 actually running.

20 This -- this e-mail itself was extracted from
21 Mr. Dallmann's computer that was retrieved from the Tona Circle
22 address and will come in through our forensic examiner,
23 Ms. Peterson. I would also note that one of the objections to
24 this e-mail is that it is hearsay. There are no statements in
25 this e-mail. This is an e-mail from Mr. Dallmann to

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1 Mr. Vaillant with images in it.

2 THE COURT: Okay.

3 Mr. Tate?

4 MR. TATE: Your Honor, we have outlined our objection
5 to this. It is hearsay. Whether there is a statement it or
6 not, the --

7 THE COURT: What truth is it being offered for?

8 MR. TATE: That's what I don't know. And --

9 THE COURT: But they're not offering it -- in other
10 words, every exhibit that's offered isn't always offered for the
11 truth. It can be offered for different purposes. They're
12 saying this exhibit is being offered for the fact that it was
13 sent. I'm not sure -- other than the fact that the images were
14 sent, what is it you're specifically objecting to?

15 The images were sent, right? You can't dispute that.
16 They were sent to a coconspirator in this case. What is it
17 specifically you're disputing about this e-mail and the images?

18 MR. TATE: Everything that he said around the image
19 that -- that this was sent to Mr. Vaillant for the purpose of
20 creating a fake website. That's not spoken of anywhere in this
21 image. I mean, it's confusing. I mean, just to have an image
22 of a jet and then to have, you know -- the Government have
23 conjecture as to what the -- what the image meant in an opening
24 statement before the -- the image has ever been introduced into
25 evidence and given any context, I just think that's improper.

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1 THE COURT: Okay. Well, as I understand it, there's
2 going to be some evidence of the fact that they tried to pass
3 the company off as an aviation company, and there's some e-mails
4 to that effect, right, and that's going to be part of their
5 theory of the case, right?

6 MR. TATE: Right. Yes, and that's fine, but I think
7 the evidence will show they were an aviation company, too. But
8 I just don't see, in the context of an opening statement, what
9 this really means. I mean, to me, it's just, you know -- maybe
10 I thought --

11 THE COURT: They may just be trying to argument that,
12 in fact, your client allegedly passed off this illegal
13 copyrighting company as an aviation company to be able to get
14 this other company to allow it to accept payments. That's their
15 theory. I'm not saying that, you know, I believe that or not,
16 but that's their theory. They're allowed to put their theory of
17 the case on.

18 I don't see anything about this that is inconsistent
19 with that or misleading about that. They're simply saying these
20 images were sent as part of that. So I appreciate your
21 comments. I'll allow this exhibit --

22 MR. TATE: All right.

23 THE COURT: -- to be used.

24 Mr. Christin, the next exhibit.

25 MR. CHRISTIN: Thank you, Your Honor.

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1 I think we should, just for efficiency, take the next
2 two at the same time. This is 62A, and that's the callout for
3 it. And this is 182, and this is the callout for it. Again,
4 these are --

5 THE COURT: So, Mr. Christin, let me stop you here.

6 MR. CHRISTIN: Yes, Your Honor.

7 THE COURT: I'm not going to allow these exhibits in
8 part, and I'm going to explain this to you when they come in,
9 too, which is we need a forensic person to explain how these --

10 MR. CHRISTIN: These were not extractions. These were
11 preauthenticated exhibits from Google.

12 THE COURT: Mr. Christin, I appreciate that. For most
13 individuals looking at, sort of, a Google account or history,
14 this is not what they would understand or would see as it
15 relates to a search or results from a search. So my concern
16 with these exhibits is they require explanation as to how they
17 appear.

18 And so that is my concern about these particular
19 exhibits because whoever is going to testify as to the exhibits
20 coming in will simply need to explain that this is how the
21 information is received. But you cannot tell that looking at
22 the exhibits. And so my concern with these exhibits really
23 relates to that.

24 I'm not sure, Mr. Christin, honestly, why you need the
25 exhibits themselves. I think you can certainly say the jury

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1 will learn that he searched for these -- this information.

2 But I'm not going to allow these exhibits not because,
3 again, I don't think they can come in, but I think they require
4 explanation. And I just want you to notice that -- to know
5 that, excuse me, when you admit them because we had this
6 conversation, I think you recall, before when looking at the
7 exhibits I asked you, "How do these appear when you receive them
8 from Google?" And you gave me this explanation about this is
9 how you would get the information, but we need someone to
10 explain that.

11 MR. CHRISTIN: Yes, Your Honor.

12 THE COURT: Okay. So --

13 MR. CHRISTIN: Understood. And I think that -- just
14 for the clarity of the record, I believe that conversation was
15 related -- was in relation to some of the Google chats and the
16 iCloud messagings that were actually extracted from devices, but
17 I understand your point and will remove these exhibits.

18 THE COURT: Okay. But also, as I said, when the
19 exhibits come in, I think it will be important to sort of lay
20 that foundation as to this is how the information is received.

21 MR. CHRISTIN: Understood.

22 THE COURT: All right. Let's move on.

23 MR. CHRISTIN: This is Exhibit 1107, Your Honor.

24 THE COURT: Okay.

25 MR. CHRISTIN: I think that the jury will recognize

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1 immediately what this is. This is a chat message between two of
2 the defendants in this case. And so, in fact, there -- it is
3 both a coconspirator statement as well as a statement by a party
4 opponent.

5 Again, this is relevant because it takes place around
6 the time of the PayPal shutdown, around the time of opening up
7 the new website, and Mr. Dallmann indicates that he's going to
8 be moving the Jetflix business away from the gray area.

9 THE COURT: Okay.

10 MR. CHRISTIN: And this was -- just Court's indulgence,
11 this was actually at the time that PayPal shut them out. This
12 was not -- this was before they opened the account at Stripe.

13 THE COURT: Okay.

14 Mr. Tate.

15 MR. TATE: Thank you, Your Honor.

16 I think I laid out the proper use of coconspirator
17 statements. You don't get to skip a step. They first have to
18 establish that there is a conspiracy and who's involved. Then
19 that's when the exception comes in in terms of a coconspirator
20 statement.

21 THE COURT: And I've already found that they've
22 proffered enough evidence for the Court to be able to make the
23 preliminary determination that they'll be able to present
24 evidence of a conspiracy in this case. So why can't they
25 present this evidence in the opening? These are statements of

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1 your client allegedly in furtherance of the conspiracy. It
2 seems to me on the face of them that they would establish that.
3 If I make the finding, which I have, that they've demonstrated
4 through the record thus far sufficient amount of evidence that
5 the Court would find that they'll be able to present evidence of
6 a conspiracy, why, then, would they be admissible if I make that
7 finding?

8 MR. TATE: We don't know who compared this chart, for
9 one. This is an actual --

10 THE COURT: I'm sorry?

11 MR. TATE: This chart itself is compiled by -- it's cut
12 and splice. That's the other problem with it, too. It's
13 confusing to the jury. When it comes in, when it's properly
14 admitted in a trial, it will be subject to challenge at that
15 time.

16 THE COURT: Why is that?

17 MR. TATE: Right now, we can't because --

18 THE COURT: Why is that? I mean, are you -- so explain
19 to me why. These are statements that were allegedly made
20 through text messages, right, that were provided via request
21 from the provider. What about these exhibits do you anticipate
22 would render them subject to challenge as relates to
23 admissibility?

24 MR. TATE: I believe that they were downloaded from
25 a -- from separate sources. Some came through -- some documents

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1 came through subpoena. Some came through extraction of what was
2 on the cloud on devices.

3 Right in front of me now, I can't say, but what I do
4 know is that they didn't look like that. They -- they -- and
5 they put that together from something that's bigger than that.
6 That's why I called it an abstract.

7 And basically all of that has to be laid and admitted
8 separately and is subject to challenge. You can't do --

9 THE COURT: Okay. But you're not telling me what the
10 challenge is. What you're saying is you think it's subject to
11 challenge. What I understand you to be saying is that the
12 appearance of these statements is not exactly as they appear.
13 In other words, when the information was extracted and they
14 received it, it appeared differently than this. Is that what
15 you're saying?

16 MR. TATE: Right, and the information was cherry-picked
17 as well.

18 THE COURT: Are you saying that the order of these text
19 messages is incorrect? In other words, that there was messages
20 in between?

21 MR. TATE: I think there were and --

22 THE COURT: You can't tell me you think there were,
23 right. Either there were or there were not. So, in other
24 words, if you're proffering to me that there were messages that
25 were in between that they skipped over, then you need to show

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1 me --

2 MR. TATE: Yeah.

3 THE COURT: -- that, in fact, that is the case. So you
4 can't say simply say to me, "I think that there were," without
5 presenting to me information that, in fact, this is a
6 misrepresentation, which is what you're suggesting, of the order
7 of the text messages.

8 Do you have anything that you can show me that would
9 indicate --

10 MR. TATE: I don't have that with me right now, so I'm
11 not comfortable saying that that's not the order of it. But
12 what I'm saying is the information that came in was not like
13 that. They put that together themselves. Somebody created
14 that.

15 THE COURT: Okay. Let's distinguish between how it's
16 presented and the actual content of the messages. Are you
17 saying the content of these messages is incorrect or a
18 misrepresentation?

19 MR. TATE: No.

20 THE COURT: Okay. What you're saying is how they're
21 presented, right, is inconsistent with how they were received?

22 MR. TATE: Yes.

23 THE COURT: Okay. And what about the presentation
24 makes them prejudicial in any way to your client? I mean, this
25 is the way that a chat or a text message might appear. And, in

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1 fact, the reason why I didn't allow the other messages is
2 because they didn't appear in a way that people might generally
3 understand how a search occurred.

4 This seems to look more consistent with what a text
5 message would look like in the context of it being sent. You're
6 not disputing the content. So why would this be prejudicial to
7 your client?

8 MR. TATE: Because it's not proper in an opening
9 statement.

10 THE COURT: Okay. All right. Thank you.

11 MR. TATE: All right.

12 THE COURT: Anyone else?

13 MS. ARMENI: Your Honor, just to the extent from
14 Mr. Courson that we had joined in in Mr. Tate's objection.

15 THE COURT: Okay. Do you have anything else you wish
16 to add to the argument, Ms. Armeni?

17 MS. ARMENI: No, Your Honor.

18 THE COURT: All right. I'll allow this exhibit. Let's
19 move on.

20 MR. CHRISTIN: Thank you, Your Honor. And just for the
21 benefit of the Defense, this was an extraction from
22 Mr. Dallmann's phone.

23 So the last two exhibits are -- I don't believe there
24 were any objections to, that I received. And so this is the
25 first slide. These are quotes that were extracted from the

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1 officer -- from the agent's notes, and they will be testified
2 to, as well as this second slide.

3 MR. MARSH: We did have an objection.

4 THE COURT: Okay. Let's put --

5 (Court reporter clarification.)

6 MR. MARSH: We did have an objection. We sent it
7 precisely at 8:30 yesterday to --

8 THE COURT: Let's go back -- okay. So go ahead, Mr. --
9 oh, there we go. That's it.

10 So what's your objection, Mr. Marsh, as relates to
11 these particular --

12 MR. MARSH: The objection is that this is taken out of
13 context and are just snippets from a much more lengthier 302
14 where Mr. Jaurequi is talking about how he was trying to make
15 ends meet and what he had done to do that, including coming out
16 of his own pocket to keep his household going.

17 THE COURT: So, Mr. Marsh, let me ask you this
18 question. Is it the fact that it appears in a demonstrative?
19 Because I don't know that -- if Mr. Christin stood up and said,
20 "You will hear that Mr. Jaurequi said, 'Illegal things are just
21 illegal things, but one does not think about it when one is just
22 trying to make ends meet,'" I don't know that there would be an
23 objection to that. That's a statement of your client that would
24 be admissible. Is it simply the fact that it's on this
25 demonstrative? Because I --

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1 MR. MARSH: I think that's part of it, and particularly
2 when you have these quotation marks and you've got agents who
3 aren't using tape recorders, even though they could, and --
4 yeah, that's a quote. It's a quote from a 302, which is
5 different than what's in the agent's notes. I mean, I don't
6 think Mr. Jaurequi says, "One does not think about it when one
7 is trying to make one's ends meet," like a Stanford English
8 professor.

9 THE COURT: But my question to you, Mr. Marsh, is this.
10 As you understand it, is this statement going to come in like
11 this in quotes or is he going to say that that's what he said in
12 terms of testimony? I agree that you could challenge the
13 credibility of the recollection of the agent. You can say that
14 "My client doesn't speak this way," right; that "This is not a
15 probable statement." That's different, as you know, than them
16 saying, "This is what the agent's going to say Mr. Jaurequi said
17 and we're going to present that." And certainly that would be
18 admissible.

19 And again, as I said with Mr. Tate, as you know,
20 Mr. Marsh, if I think it's going to be admissible, then it can
21 be used in opening. Really, the issue is about misuse or its
22 misunderstanding. You're not disputing, as I understand it,
23 that they're going to present evidence that this was a quote
24 that your client actually made. What you're disputing is its
25 use in opening and the fact that you think that it may be taken

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1 out of context? Is that your -- is that your argument?

2 MR. MARSH: That's part of it, and particularly the use
3 of the quotation marks as if it were recorded when it wasn't.

4 THE COURT: So, again, I guess let me -- let me ask
5 Mr. Christin in terms of how this will come in in terms of the
6 quotation marks or not. Because obviously there are no
7 recordings here. But is the agent going to say that this is
8 exactly the words that were used by Mr. Jaurequi? Because
9 obviously he'd have to say that if there are quotation marks.

10 MR. CHRISTIN: Your Honor, so the -- some of the 302s
11 contain specific quotes of what the defendants said, and when
12 those quotes are used, that -- that is an indication that it
13 was -- it was written down exactly how the defendant said it.

14 So I would lay the foundation as to what exactly did he
15 say. "Were those his words or are you describing it?" And I
16 think the agent could say those -- that, "That was his words. I
17 put quotation marks around it."

18 THE COURT: Again, so just so we're clear, right, the
19 agent's going to say, "These were his exact words"? Because,
20 again, I agree that it should be quotation marks around the
21 content of a 302. That's different. If the agent wrote what he
22 thought Mr. Jaurequi said and then you're quoting a 302, then
23 you should not put quotation marks. If the agent's going to
24 say, "This is the exact quote that Mr. Jaurequi made word for
25 word," then that's different. So which is it?

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1 MR. CHRISTIN: My -- Your Honor, I'm not quoting the
2 agent's words. I'm quoting the agent quoting Mr. Dallmann. So
3 I would ask, "What exactly did Mr. Dallmann say" -- or Jaurequi.
4 Sorry. And he would say, "Illegal things are just illegal
5 things, but one does not think about it when one is just trying
6 to make ends meet."

7 And if the agent is unable to recall the specific exact
8 words, then we would refresh their recollection if they said, "I
9 can't recall."

10 "Is there anything that would refresh your
11 recollection?"

12 "Yes. My notes where I drew quotation marks around
13 exactly what was said."

14 THE COURT: So your understanding is that, again, just
15 so we're clear, these are not quotation marks around a section
16 of a 302. These are quotation marks within the 302 where the
17 agent has recorded what he believes to be the exact words.

18 MR. CHRISTIN: That's my understanding, and I will even
19 double-check that before I put this line into opening. That's
20 my --

21 THE COURT: Because here's what I'm going to tell
22 you...

23 (Prosecution conferring.)

24 THE COURT: Here's what I'm going to tell you,
25 Mr. Christin.

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1 MR. CHRISTIN: Yes, Your Honor.

2 THE COURT: If I -- and I'm contemplating this. If I
3 were to allow this and the agent doesn't say that, then I'm
4 going to tell the jury, "You were told at the opening that the
5 agent said this was going to happen and that didn't happen, and
6 you can take that into consideration in the context of the
7 Government's case and the credibility of this agent." I will
8 make that specific statement --

9 MR. CHRISTIN: Understood, Your Honor.

10 THE COURT: -- to the jury if it doesn't come in as you
11 say it comes in.

12 MR. CHRISTIN: Understood.

13 THE COURT: Because I think that might be the only way
14 to address it if that's not the way that it comes in.

15 The other issue I have with the second quote is that
16 it's partially not a quote. So that one, you can't use at all
17 because you have to -- it starts off with language that's not
18 quoted.

19 But if you want to use the first quote -- and I'll
20 think about this just for a moment here, looking at it again --
21 you can, with the understanding that it needs to come in exactly
22 that way.

23 MR. CHRISTIN: Understood, Your Honor.

24 THE COURT: All right. Next -- the next slide.

25 MR. CHRISTIN: And this is the final one, Your Honor.

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1 THE COURT: Mr. Tate.

2 MR. TATE: Thank you, Your Honor.

3 I think that, again, these are quoted statements of
4 Mr. Dallmann from a police report. And, of course, police
5 reports themselves are inadmissible. They're hearsay. It's not
6 Mr. Dallmann's statement. He didn't adopt it. It's subject to
7 cross-examination should the agent testify and said he said this
8 in quotes. But I just think this is improper for an opening
9 statement. It's not his statement at all. It's the agent's
10 statement, and so that would be the objection to that.

11 And they took bits and pieces out of a whole statement
12 and then compiled it in a way that makes it look like one
13 statement filed -- followed the other. I just think it's
14 improper for an opening statement. It might be good for
15 closing, but for just a forecast of the evidence, this just
16 seems to be improper before any statement of Mr. Dallmann comes
17 into evidence.

18 THE COURT: Okay.

19 Mr. Christin, I guess my question is, this is a little
20 bit different than the earlier demonstrative where you have
21 these messages. So maybe you can explain to me this
22 back-and-forth because it's not clear to me if they're separate
23 statements or if it's part of a conversation.

24 MR. CHRISTIN: Yes, Your Honor. This is -- these
25 quotes come from -- throughout an interview. So it's not --

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1 it's not just a back-and-forth. It's, "Oh, the aircraft
2 customers? We only had two." And then, "To PayPal or that
3 e-mail to Stripe, well, maybe I didn't disclose everything I
4 would have. Yes, I know that that's a lie. I'm not saying
5 everything I did was right." That those three kind of come in
6 around the same time of the interview.

7 And might I inquire with the Court, if I removed the
8 quotes, would that appease the Court?

9 THE COURT: No. Here's my concern, Mr. Christin. I'll
10 let you make reference to these statements. I'm not going to
11 let you use the demonstrative.

12 MR. CHRISTIN: Understood, Your Honor.

13 THE COURT: And part of the reason why is it's
14 difficult to see what the order is. If they're -- in this
15 situation, it may appear that they're meant to be sequential,
16 but they're not sequential. And I think, particularly because
17 I'm going to allow the earlier slide where they are sequential,
18 this slide is not appropriate to be used. If you again want to
19 reference statements by saying, you know, "You will learn that
20 he said this," obviously that's something you can do in opening.

21 MR. CHRISTIN: Understood.

22 THE COURT: But I will not allow this demonstrative.

23 MR. CHRISTIN: Thank you.

24 THE COURT: All right.

25 So, Mr. Marsh, I didn't come back to you on the one

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1 particular quote, but I don't know if there's anything that you
2 wanted to add. But I'm going to allow it with the
3 understanding -- and I'm sure you'll remind me -- if it does not
4 come in in the way that was described, then I will give that
5 specific instruction to the jury.

6 MR. MARSH: I will surely remind you, Your Honor.

7 THE COURT: Okay. Is there -- okay. I think that
8 addressed the Government's demonstratives. Then I believe we
9 had demonstratives from, I think, Ms. Bliss.

10 Did you have a demonstrative?

11 MS. BLISS: Yes, but I didn't see -- well, there was
12 the objection by the Government previously, but then I didn't
13 see an objection last night. The objection was based on
14 relevance.

15 THE COURT: So which -- again, can we switch over to --
16 are you plugged into the system? Can we see Ms. Bliss's
17 demonstrative exhibits, please.

18 MS. BLISS: 7002, 3, and 4D, just demonstrative.

19 MR. CHRISTIN: And, Your Honor, for the -- to clarify
20 the record, the Government did, in fact, object last night --

21 THE COURT: That's what I thought.

22 MR. CHRISTIN: -- at approximately 6 o'clock in its
23 e-mail with its demonstratives.

24 MS. BLISS: I didn't see that. I'll double-check.

25 THE COURT: So I'm not really sure the particular

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1 relevance of these images, Ms. Bliss. I don't --

2 MS. BLISS: Well, it's --

3 THE COURT: -- really know why they are here. I mean,
4 people can see who your client is. There's no real context to
5 these demonstratives either. It would be one thing if it was
6 just a picture of him by himself, but he's here. I don't really
7 know why we would add to these particular -- add these
8 demonstratives, in part, because I think they're confusing
9 because they don't have context. And you can't explain it.

10 MS. BLISS: Well --

11 THE COURT: I mean, he's here. So what is it that you
12 want to use them for?

13 MS. BLISS: Well, the context is that I have a good
14 faith belief that there will be evidence coming in about
15 Mr. Huber's story, how he came to the United States and why.
16 And his wife, Agnes, who is in the picture, she was there when
17 the -- the FBI interviewed Mr. Huber. So it puts a name with a
18 face.

19 And so I -- it's part of his story and who he is. And
20 it is relevant. He's not confined to the four corners of
21 accusations contained in the Government's indictment.

22 THE COURT: So are you going to be putting on character
23 evidence? Because that's -- that what it sounds like you're
24 saying.

25 MS. BLISS: That's not character evidence, Judge.

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1 THE COURT: If you're going to say that this is part of
2 his story and he came here and this is who he is, that is, from
3 my view, character evidence. And so are you going to be
4 offering this exhibit at the trial?

5 MS. BLISS: No. No, I'm not.

6 THE COURT: Okay.

7 MS. BLISS: That's why it's a demonstrative aid.

8 THE COURT: Yeah. No. Then if you're not going to
9 offer it, right, and it's not going to be admitted, then I'm not
10 going to allow it.

11 MS. BLISS: All right. I understand. But, Your Honor,
12 talking about who he is, why he came here, why he applied for a
13 job, what his work background -- that's not character evidence.

14 THE COURT: You and I can disagree about that. It
15 depends upon where you go with that. It certainly can be
16 character evidence. You're describing it to me generally.

17 So there's a point at which that line is crossed. I
18 haven't heard what you're going to say in detail, Ms. Bliss.
19 But there is a point at which when you tell a person's story and
20 who they are, that is, in fact, character evidence. When you
21 talk about their particular traits or habits in terms of what
22 may or may not have made them successful, what they believe in,
23 that can be character evidence. Again, I don't know how deeply
24 you're going to get into that.

25 That being said, again, if this is not going to be

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1 offered in the case, then I'm not going to allow it.

2 MS. BLISS: Very well, Your Honor. We'll withdraw it.

3 THE COURT: Okay.

4 Any other demonstratives, then?

5 MR. CHRISTIN: Well, Your Honor, just given the Court's

6 rulings, I've now removed those exhibits from the presentation.

7 But I wanted to make sure it was okay with the Court that

8 instead of the PayPal slide, it would just be a blank slide that

9 says: "PayPal Evidence."

10 THE COURT: Well, I'm sorry. Why do we need a blank

11 slide? Because you need to fill the space?

12 MR. CHRISTIN: So that as I talk about it, they're not

13 looking at something that's -- that's not what I'm talking

14 about, right. It falls in the middle of the presentation.

15 THE COURT: Oh, I see what you're saying. Just because

16 you don't want there to be a blank screen, per se.

17 MR. CHRISTIN: Correct.

18 THE COURT: That's fine.

19 MR. CHRISTIN: And then same thing with -- there will

20 be one that says: "Google Evidence," and there will be one

21 thing that says: "FBI Interviews."

22 THE COURT: That seems to be fine.

23 Any objection to that?

24 MR. TATE: No objection.

25 MR. CHRISTIN: Thank you, Your Honor.

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1 THE COURT: All right.

2 All right. Well, with that, that's also helpful for me
3 as we finalize -- we're going to go back and finalize the
4 preopening instructions. Then we'll send them out to you. Then
5 we'll come back out around probably 10-ish or so or maybe a
6 little bit earlier, depending upon how quickly we get these to
7 you now that we've had this discussion and discussed the
8 preopening instructions.

9 Is there anything else that we need to do today -- or
10 this morning, I should say?

11 MR. CHRISTIN: Yes, Your Honor. The Government moved
12 to unseal its trial brief that was filed as Document Entry 381
13 so that it can provide it to Defense counsel.

14 THE COURT: Any objection to that?

15 MR. TATE: No objection.

16 THE COURT: All right.

17 So that motion will be granted.

18 MR. CHRISTIN: Thank you.

19 MR. MISHLER: 381?

20 MR. CHRISTIN: 381.

21 THE COURT: Okay. And as I've indicated, we'll get
22 started probably around 10:30-ish with the openings and start,
23 obviously, with the Government. And then, as I said, we'll do
24 the order starting with Mr. Dallmann and then Mr. Courson and
25 then Mr. Huber, then Mr. Jaurequi, and then Mr. Garcia. That

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1 will be the order of the opening statements.

2 And then, Mr. Christin, we'll have your first witness
3 probably, depending upon how long we go, after lunch. So we'll
4 probably go for about, I would imagine, two hours, two and a
5 half hours for the openings and the instructions. We'll take a
6 lunch break, and then we'll have your first witness.

7 MR. CHRISTIN: Understood.

8 THE COURT: And that will be?

9 MR. CHRISTIN: Special Agent Tim Lynch, who interviewed
10 Mr. Dallmann.

11 THE COURT: Okay. All right.

12 All right. Anything else we need to do before I take a
13 break here and we finalize the instructions?

14 (No response.)

15 THE COURT: All right. All right. Thank you all for
16 your time. We'll be adjourned.

17 (Recess taken at 9:15 a.m.)

18 (Resumed at 10:11 a.m.)

19 THE COURT: Please be seated.

20 Okay. We're back on the record here.

21 Did you all receive a copy of the instructions?

22 MR. MERRIAM: Yes, Your Honor.

23 MR. CHRISTIN: Yes, Your Honor.

24 MS. BLISS: Yes, Your Honor.

25 THE COURT: All right. Let's see about any

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1 recommendations for modifications.

2 (Pause.)

3 THE COURT: All right. Let's just go through. Does
4 the Government have any objections to the Court's instructions
5 or requests for changes?

6 MR. MERRIAM: Your Honor, we did get a chance to read
7 these and appreciate the Court giving us that opportunity. Our
8 only concern is on Page 11, there's a deliberate ignorance page
9 that, at least in the copy we got, retains some language
10 apparently about a drug case.

11 THE COURT: Oh.

12 MR. MERRIAM: And so we could suggest some
13 modifications for that that would --

14 THE COURT: Yeah, yeah. That was -- okay.

15 MR. MERRIAM: That's at Page 11.

16 THE COURT: Uh-huh. Yeah, I'm not sure what happened
17 with that language. Okay. What would you suggest?

18 MR. MERRIAM: So I think that the title, and I don't
19 know exactly how the Court reads this, but it -- the standard
20 will be willfully for the copyright matter. I don't know that
21 that needs to be in the title.

22 THE COURT: So here's what I think, actually, as
23 relates to this. I actually think, because I did not intend to
24 include this instruction, I'm just going to take this out. I
25 think it needs to be placed in a larger context. I think the

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1 conspiracy language covers what we're talking about here.

2 I actually didn't -- in looking at this, I didn't want
3 to include this particular instruction. We can have a willful
4 instruction that gives more detail and a deliberate ignorance
5 instruction that happens later, but it was not my intention to
6 include this one now.

7 MR. MERRIAM: Your Honor, with that, no objection. And
8 having reviewed the others, we think they accurately restate the
9 law at the level of specificity that -- that's necessary at this
10 point. So no other objections or concerns.

11 THE COURT: Okay.

12 From the Defense?

13 MR. TATE: Your Honor, on behalf of Mr. Dallmann, with
14 respect to the substantive instructions, of course the Court can
15 give those ahead of evidence, but I think the problem that it
16 presents is that there hasn't been any evidence in the case, and
17 I'm looking at the essential elements, particularly as it
18 relates to Count Four and Five, public performance. It's not
19 defined. And in the substantive instruction, public performance
20 should be defined.

21 THE COURT: Are you going to offer an instruction?
22 Because, I mean, this instruction's more or less straight from
23 the statute and the indictment. So are you offering something?
24 Because I'm -- I don't -- again, if you want to add an
25 instruction, I'll consider that, but --

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1 MR. TATE: Okay.

2 THE COURT: -- I am going to instruct on the counts. I
3 think it's important for them to be instructed on the counts.
4 If you have language you want to add, suggest, go ahead.

5 MR. TATE: Your Honor, I don't have one drafted
6 because, as I mentioned, I'm not accustomed to doing a
7 substantive instruction ahead of trial. Normally that's done at
8 a charge conference. I would be -- like to reserve the right to
9 tender instructions based on the evidence adduced at the trial,
10 but --

11 THE COURT: We're going to have -- again, we're going
12 to have detailed instructions at the end. This is not a
13 substitute, obviously, for that. And I think I referenced that.
14 This is just so they understand the nature of the charges. I
15 mean, that's why, again, the instructions are somewhat
16 abbreviated compared to what they will be at the end, and to the
17 extent we need to address substantive aspects of the charges,
18 I'm happy to do that.

19 I just want to make sure that these instructions are
20 consistent with the statute and the charges. I don't think
21 there's anything that is inaccurate about them, but if there is,
22 that's what I want the parties to tell me. If you think somehow
23 it misstates the statute or the elements, I'm happy to consider
24 that and make any modifications to that.

25 MR. TATE: We would reserve any objection at this time,

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1 Your Honor. But I think it does outline the elements of the
2 offense.

3 THE COURT: Okay. Thank you.
4 From anyone else?

5 MS. ARMENI: Your Honor, Paola Armeni on behalf of
6 Mr. Courson.

7 Your Honor, I don't have any objections to the
8 instructions you provided. We did -- on behalf of Mr. Courson,
9 however, we submitted a preliminary instruction in docket --
10 it's Document 350. And so we would ask the Court to at least
11 consider giving that instruction.

12 THE COURT: I'll go back and look. I looked at them
13 all, Ms. Armeni. Perhaps, you can tell me what it is
14 specifically you want to have added.

15 MS. ARMENI: Certainly, Your Honor. So our preliminary
16 instruction we submitted on May 21st of this year in
17 Document 350 was based on the Federal Rule of Evidence Rule 105,
18 and it was the preliminary instruction that read: "This is a
19 multi-defendant case. There will be times throughout this case
20 that evidence will be admissible for one purpose or against one
21 defendant, but not for -- not another. If the Court admits this
22 type of evidence, I will instruct you on the limited purpose for
23 which it can be used."

24 THE COURT: Okay. I did have this one for separate
25 consideration for each defendant, but I think that's fine.

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1 That's an instruction I would normally give in this case at the
2 end.

3 Let's do this. I'm happy to add that.

4 Is there any objection to that from the Government?

5 MR. MERRIAM: If we could have the Court's
6 indulgence --

7 THE COURT: I think it's the -- it's a standard
8 instruction actually from -- I think it's a standard circuit
9 instruction, if I'm recalling correctly.

10 Is that the Ninth Circuit standard instruction,
11 Ms. Armeni?

12 MS. ARMENI: No, Your Honor, it's not a Ninth Circuit
13 standard instruction. It's just straight from the Federal Rules
14 of Evidence.

15 THE COURT: Well, I think there's a standard
16 instruction that actually says that, but I don't think that
17 that's a misstatement of the law. I think that's accurate.

18 Mr. Merriam?

19 MR. MERRIAM: So, Your Honor, we think this is covered
20 by the multiple defendants and consideration. We also -- this
21 is not the time to revisit this, but there is some ongoing
22 discussion that the Court's taken under advisement about the
23 timing of these types of instructions in all. We don't object
24 to the language specifically --

25 THE COURT: So I guess I don't understand. Like, I'm

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1 going to -- I'm actually going to say that at certain points in
2 the trial, right? I'm going to say, right, and they've asked me
3 to say at certain points in the trial: "Evidence may be
4 admitted against one defendant, but not necessarily against
5 another defendant." And then they can take that into
6 consideration.

7 We are going to take that on a day-by-day basis, but
8 I'm going to give that instruction anyway. So I'm not sure why
9 there would be an issue with giving it preliminarily.

10 MR. MERRIAM: And I was just seeking clarification from
11 the Court on that point. We last discussed that on May 16th.
12 And with that, we don't object to the standard instruction.

13 THE COURT: Okay.

14 Ms. Armeni, if you could do me a favor -- I don't know
15 if you have access to your e-mail. If you could e-mail us that
16 language, we could just more easily add it. Can you do that?

17 MS. ARMENI: I can.

18 THE COURT: Thank you.

19 Do any of the other defendants have any requests for
20 modifications or objections to the preliminary instructions?

21 Mr. Marsh?

22 MR. MARSH: Good morning, Your Honor.

23 Given that you won't be using the deliberate ignorance
24 instruction, that was one of my points. So thank you.

25 The second was in the elements for Count One,

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1 conspiracy. We had filed some alternate instructions that made
2 clear that for the conspiracy count the Government is only going
3 forward on the reproduction theory. So in our view, as part of
4 the element, the first element should say: "There was an
5 agreement between two or more persons to commit criminal
6 copyright infringement" and insert "by reproduction." And
7 that's only limited to the first Count.

8 THE COURT: Any objection to that?

9 MR. MERRIAM: Your Honor, I think that just gets too
10 specific for the purposes of these preliminary instructions.

11 THE COURT: Was that incorrect? Because, I mean, it --
12 first of all, let me ask you this, Mr. Merriam. Is that
13 incorrect?

14 MR. MERRIAM: That is a correct statement of --

15 THE COURT: Okay.

16 MR. MERRIAM: -- what we had represented to Defense.

17 THE COURT: You're just saying you don't think it's
18 necessary, but you're not saying it's incorrect.

19 MR. MERRIAM: That's correct, not incorrect.

20 THE COURT: All right. I mean, I think that's fair. I
21 mean, I think that they may not fully appreciate that until the
22 end, and I think it will be pretty clear, Mr. Marsh, but I'm
23 happy to make that change which I will make to the instructions.

24 Anything else?

25 MR. MARSH: We would also request since it's an

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1 extremely important element that you define "willfully" because
2 it's not a word that somebody would automatically know what it
3 means in this legal context where it's, you know, knowing what
4 the law is.

5 And -- and we did submit, again, a proposed willfulness
6 instruction. We would even be okay if you used the Government's
7 proposal, and we can argue about, you know, what you give as a
8 final -- final instruction. But I do think that's a term that
9 should be defined for the jury before they hear opening
10 statements.

11 THE COURT: And why is that, Mr. Marsh?

12 I mean, saying -- and I say that, in part, because I
13 appreciate the definition, but I also think that these
14 particular instructions are meant to help clarify certain
15 aspects of the law that may not be as well-known to jurors. I
16 don't know that there's anything about the willfulness
17 definition itself that is, sort of, counterintuitive to the
18 point that I would feel that we need to do it ahead of time.

19 So, in other words, they're going to get it at the end,
20 which I think will probably be more helpful because you all are
21 going to be making more specific arguments about what was and
22 was not --

23 MR. MARSH: Okay.

24 THE COURT: -- known. And so I don't necessarily
25 disagree with the fact that it should be given at some point,

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1 but preliminarily, again, I try to keep the instructions
2 somewhat shorter and then we'll have more detailed instructions
3 later. So unless you think it's sort of essential, which I
4 don't know that it is here, I'm inclined to keep it out.

5 MR. MARSH: I --

6 THE COURT: And the other reason why I'm saying that,
7 too, Mr. Marsh, is there is going to be some issue which we'll
8 have to parse a little bit at the end about the fact there are
9 multiple counts here against Mr. Dallmann, there's basically one
10 count against the other defendants. And the willfulness is a
11 little bit different as relates to the different counts in terms
12 of the participate in the conspiracy willfully and intentionally
13 versus Mr. Dallmann's willfulness or not or intent as relates to
14 these other counts.

15 That's another reason why I wanted to stay away from
16 the willfulness instruction at the beginning because I think
17 it's important to distinguish between the individual counts and
18 the conspiracy count so they understand that, but willfulness is
19 something that we will have to parse with a little more detail
20 at the end.

21 MR. MARSH: I agree with you 100 percent on that it is
22 different for the conspiracy count versus the substantive
23 counts. Same for the deliberate -- deliberate ignorance
24 instruction. So I -- we maintain our instruction -- or
25 objection, ask for the willfulness instruction, but I understand

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1 what you're planning to do.

2 I will tell you that I may mention the term briefly
3 during opening just to --

4 THE COURT: That's fine.

5 MR. MARSH: -- make sure the jury has something to look
6 for during the trial --

7 THE COURT: Okay.

8 MR. MARSH: -- because it's obviously important to our
9 client.

10 THE COURT: That's fine.

11 MR. MARSH: Thank you.

12 THE COURT: Ms. Bliss.

13 MS. BLISS: Yes, Your Honor. I also share the same
14 concerns as Mr. Marsh, and there was a proposed willfulness
15 defined within that conspiracy instruction that Mr. Brown
16 proposed. And the reason why I think it's important on behalf
17 of Mr. Huber is because this is going to be a long trial, there
18 are over 700 exhibits, and the jury needs to understand given
19 the length, the complexities, and the amount of exhibits
20 introduced -- so many of which have nothing to do with
21 Mr. Huber -- they need to understand what willfulness means.
22 Because that's the agreement --

23 THE COURT: What is not captured in the description of
24 what it means for someone to participate in a conspiracy? What
25 do you believe is so essential to the preliminary instruction

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1 that is not captured in the description of participating or not
2 in a conspiracy?

3 MS. BLISS: But it's part --

4 THE COURT: Okay. I want you to answer my question.
5 My question is, what do you believe is part of the willfulness
6 instruction that is so essential that is not captured to a
7 certain extent in the instruction regarding participation in a
8 conspiracy?

9 MS. BLISS: Because the willfulness instruction is part
10 and parcel of the agreement that a defendant joins to
11 participate in this type of conspiracy.

12 THE COURT: Ms. Bliss, but you're not actually
13 answering my question. What is it that's in the willfulness
14 instruction that's not captured in the instruction regarding
15 participating in the conspiracy that you think is so essential
16 that it should be highlighted preliminarily?

17 MS. BLISS: "Willfulness, in the criminal copyright
18 context, means a voluntary, intentional violation of a known
19 legal duty. That is, a defendant must first have actual
20 knowledge of the law, and then he must voluntarily and
21 intentionally violate it." That's the agreement -- that's the
22 crux of the agreement that forms the conspiracy that is being
23 alleged.

24 So that's why I think it's -- it's an unusual
25 circumstance in this particular type of case. Because copying

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1 in and of itself --

2 THE COURT: But the conspiracy instruction says you
3 willfully participate in an unlawful plan with the intent to
4 advance the objective purpose of the conspiracy or the plan.
5 How is that not willfully participating and understanding
6 copyright infringement?

7 MS. BLISS: Because it gives context to what the
8 unlawful behavior entails.

9 THE COURT: I appreciate that. I just don't think it
10 needs to be done preliminarily. I appreciate that. But I'm not
11 going to give it at this point. Thank you.

12 MS. BLISS: Thank you, Your Honor.

13 THE COURT: Okay. Anything else from any of the
14 defendants?

15 Mr. Brown?

16 MR. BROWN: May I sit just so I can look at my computer
17 here.

18 THE COURT: What's that?

19 MR. BROWN: May I sit just so I can look --

20 THE COURT: Yes, yes, yes.

21 MR. BROWN: So I have a problem -- as Ms. Bliss was
22 saying, the Government has charged a conspiracy to commit felony
23 copyright infringement. That means a very specific kind of
24 copyright infringement, more than \$2,500 retail value, 180-day
25 period, and more than 10 copies.

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1 That is the requisite intent that a defendant would
2 have to have to satisfy the mens rea necessary to enter into
3 this conspiracy. The Government says as much at ECF 200 at 6,
4 and I'll just quote this: "Because the object of the conspiracy
5 is criminal copyright infringement, the agreement element
6 requires the Government to show that the defendants joined
7 together for purposes of willfully infringing a copyrighted work
8 for commercial advantage or private financial gain by
9 reproducing or distributing within 180-day period 10 or more
10 copies of the copyrighted work, having a total retail value of
11 more than \$2,500."

12 Each coconspirator must have specifically agreed to
13 each of those elements and sub-elements. Otherwise, they lack
14 the intent to enter a conspiracy to commit felony copyright
15 infringement.

16 My concern is that if conspiracy -- the elements of
17 copyright infringement essentially become embedded into the
18 agreement element of conspiracy, and if those two things are
19 separated, my concern is that the jury will say, "Okay, we need
20 to decide whether they conspired." And let's say, "Yeah, we
21 think they did." And then they'll actually go to the elements
22 of felony copyright infringement.

23 And say, "Yeah, we think it was more than 10 copies.
24 We think it was more than \$2,500." They can't make that first
25 decision without making that second decision.

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1 THE COURT: Okay.

2 MR. BROWN: So what I would request is one instruction
3 on conspiracy that embeds the felony infringement elements into
4 the agreement element of conspiracy.

5 THE COURT: Let me pull up...

6 MR. BROWN: So I have a --

7 THE COURT: This is your proposed instruction?

8 MR. BROWN: Yeah, ECF 348, at Page 2.

9 THE COURT: Give me a moment to pull this up.

10 And are you requesting, Mr. Brown, that the instruction
11 that I have on conspiracy be -- that this be given -- because I
12 have the conspiracy instruction, and then I have the substantive
13 instruction. And then are you proposing then after those two
14 are given, this final instruction which embeds them together, or
15 are you proposing it be part of the conspiracy instruction?

16 MR. BROWN: My request would be that there be one
17 instruction, the one that I've proposed, and I would request
18 removing the proposed elements of criminal copyright
19 infringement and the proposed -- and the conspiracy to commit
20 criminal copyright infringement. So one instruction instead of
21 those two separate instructions.

22 THE COURT: Mr. Merriam, I'm just pulling this up now.

23 MR. MERRIAM: Your Honor, at this point for these
24 purposes, we agree with the Court's proposed example. There's
25 going to be a lot of discussion based on the evidence and before

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1 the final jury instructions are prepared and sent to the jury
2 for deliberations. At this point familiarizing them with the
3 concept of conspiracy, the willful agreement to participate, the
4 concept of copyright infringement, and the willfully conduct
5 that's embedded in there are going to be sufficient for these
6 purposes. We would need a much longer hearing than we have
7 today to go through this. Particularly when we discuss
8 willfully in the context of the conspiracy, it's a known
9 violation of a legal duty, not that a particular defendant is a
10 legal expert who knows the interplay between Title 17 and
11 Title 18 in order to be able to specify when context -- conduct
12 reaches various levels of infringement.

13 THE COURT: Right.

14 MR. MERRIAM: And I think that's far too detailed for
15 the purposes of these preliminary instructions, something we
16 will certainly be monitoring as the evidence comes in and in
17 preparation for our final jury deliberations and the
18 instructions we send back with them.

19 THE COURT: Okay.

20 So, Mr. Brown, I guess my question to you is the same
21 one I had asked Ms. Bliss, which is I appreciate what you're
22 arguing, which you can argue in a detailed manner in closing.
23 And I'm not preventing anyone in opening from saying, "They're
24 not going to be able to demonstrate that, in fact, my client
25 willfully and knowingly participated. They'll have to be able

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1 to prove the different aspects of copyright infringement, and
2 they won't be able to do that." I'm not going to stop you from
3 doing that. I don't think this instruction in any way suggests
4 otherwise.

5 So, again, part of the -- the purpose of the
6 instruction is to give them, sort of, broad strokes of this.
7 They will receive detailed instructions when they go in, which I
8 think will be, of course, the most significant time as to when
9 they deliberate.

10 So is there anything about this that you think somehow
11 would prevent those arguments or in some way misstates or
12 misrepresents what the law is?

13 MR. BROWN: My concern is that, you know, the
14 Government said, "This is just to provide a broad conceptual
15 framework of the crime that's charged here." My concern is that
16 my client will be convicted of a conceptual conspiracy instead
17 of the conspiracy that the Government has alleged here.

18 THE COURT: But, Mr. Brown, what I'm saying is they're
19 going to get detailed instructions at the end.

20 MR. BROWN: Right, but they're --

21 THE COURT: So it's not as if before they deliberate
22 they're not going to get these instructions. And, in fact,
23 right, I think that's -- that is an important time to give the
24 more detailed instructions because they've received the
25 evidence.

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1 If someone makes a statement as it relates to evidence
2 or argument or a questioning that suggests elements otherwise,
3 then certainly we can address that during the trial. Again,
4 these are not meant to be the full detailed instructions. And
5 so the purpose of these instructions is to give the jury an
6 understanding of these elements, what they represent, and so
7 they can put the evidence in a particular framework.

8 But I'm not saying that you can't argue this in your
9 opening, and I'm not saying you can't say, "They're not going to
10 be able to satisfy these elements." So, again, I'm not sure why
11 I would add them now. I'm not saying that they can't be added
12 later, but I'm just sort of trying to understand why I would add
13 them now.

14 MR. BROWN: My concern is that the framework the jury
15 is being given is misleading. It suggests --

16 THE COURT: In what way?

17 MR. BROWN: It suggests there's two things to determine
18 here. Number one, was there a conspiracy? Number two, was
19 there felony copyright infringement?

20 THE COURT: Well, no, I -- look, I think that -- one, I
21 do think that the -- they do have to determine whether or not,
22 in fact, there was a conspiracy. If there's no conspiracy and
23 there's no agreement, then none of the defendants on that count
24 can be found guilty. There has to at least be an agreement.
25 Even if there's copyright infringement -- let's say people were

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1 doing it separately even -- your client is not specifically
2 charged with that, right. There may be issues there.

3 I do think the law says they have to at least find that
4 there was an agreement or a conspiracy, and then they have to
5 find that that conspiracy involved a specific crime that they
6 all agreed to participate in, which is what the conspiracy
7 instruction says.

8 And so I don't agree that it's one step. I think they
9 first have to decide there's a conspiracy. I think the law says
10 that. And as part of deciding there's a conspiracy, they have
11 to decide there was an agreement, but there was also an
12 agreement to do something specifically unlawful. And it can be
13 an agreement to do three different things that are unlawful, as
14 you know. So there is a separate two-part aspect to this, and
15 it seems like you're suggesting that there isn't, but even in
16 your instruction, there's two aspects to it, which is the
17 conspiracy and the unlawful, sort of, object of the conspiracy.

18 And so I'm trying to understand the legal distinction
19 you're making because I don't think that that is the statement
20 of the law. I think there still has to be at least a two-step
21 process, is there a conspiracy, one, and did this conspiracy
22 involve an unlawful act. Because certainly people just working
23 together towards a legal purpose is not an unlawful conspiracy,
24 just as people working together. And so I'm trying to
25 understand what you mean by one step.

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1 MR. BROWN: The -- the mens rea, the scienter required
2 to enter into the kind of conspiracy that the Government has
3 alleged here, is very specific and very technical. These
4 defendants could not have simply agreed to violate copyright law
5 in a general sense. That would be insufficient for a
6 conviction. Because the conspiracy they've been accused of is
7 conspiring to violate -- is conspiring to commit felony criminal
8 copyright infringement, which has very specific elements.

9 So in order -- in order for Mr. --

10 THE COURT: So are you asking me, because what I could
11 do -- if you're asking me to be more detailed about the elements
12 of criminal copyright infringement, I guess that's separate. If
13 you're saying that the instructions that we have as it relates
14 to criminal copyright infringement are incorrect --

15 MR. BROWN: Well, I think --

16 THE COURT: -- and they need to be more specific, then
17 that's a separate argument. So if you're saying, for example, I
18 have here under Count One, elements of criminal copyright
19 infringement, four elements here. If you're saying that you
20 think that those elements need to be more specifically defined
21 in this case, that's separate. I'm not going to change the
22 conspiracy --

23 MR. BROWN: Okay.

24 THE COURT: -- instruction because I think that's
25 consistent with the law. But it seems to me what you're saying

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1 is, is that in this case, yes, there has to be a conspiracy, but
2 it's a conspiracy for a very specific type of copyright
3 infringement --

4 MR. BROWN: Exactly right.

5 THE COURT: -- that there's a subsection.

6 MR. BROWN: Exactly right.

7 THE COURT: That, Mr. Brown, speaks to me about the
8 detail of the elements of the criminal copyright infringement
9 versus the issue of the conspiracy.

10 Now, the challenge here is we have multiple counts that
11 have to be considered in the context of this. What I don't want
12 to do is confuse them before they've heard the evidence in this
13 case. The other reason why I give the instructions this way is
14 it's difficult to understand some aspects, particularly with
15 this type of a charge, until they hear the evidence in the case.
16 So I just want to be clear, I'm not preventing any defendant
17 from saying or arguing or asking questions about the details of
18 the elements of copyright infringement. I just don't know that
19 we need to be that detailed in a preliminary instruction at this
20 point.

21 So, Mr. Brown, are there specific recommendations you
22 would have as relates to the -- again, this is Page 5 we're
23 talking about.

24 MR. BROWN: Yeah. Yeah, yeah, yeah. What I would ask
25 is that the felony aspects of copyright infringement be added as

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1 elements to this. That being 10 or plus copies having retail
2 value of more than \$2,500 within 180-day period.

3 MR. TATE: Your Honor, on behalf of Mr. Dallmann --

4 THE COURT: Hold on. Hold on a second, please.

5 Mr. Brown, are you asking, then, that the Court include
6 language after this -- these four elements to say -- because
7 they have to find these four on top of those, right? So it
8 wouldn't be sufficient to replace them --

9 MR. BROWN: Correct.

10 THE COURT: -- to say, in effect, you know, in this
11 case the defendants have been charged with conspiracy to commit
12 felony criminal copyright infringement. This also requires
13 these elements.

14 MR. BROWN: I think that would satisfy.

15 THE COURT: Is there any objection to that?

16 Now, the reason I say this is because this is also
17 going to open the door to something else, which I know the
18 Government is going to come back to as relates to value and the
19 amount of value that they want to add in. And I'm happy to add
20 this instruction in, but this means that I'm not going to put a
21 restriction on them as it relates to the dollar amounts that are
22 lost, right. You all remember that conversation we had about me
23 limiting them and Ms. Oliva standing up repeatedly to remind me
24 about the fact that they wanted to be able to do this. I think
25 that's accurate, but I also think it means that then they get to

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1 put in this more detailed information, which I think is
2 appropriate given what I've seen of the trial briefs and the
3 arguments here. But I'm happy to add this instruction.

4 Mr. Merriam?

5 MR. MERRIAM: So I think that the way the Court just
6 described that, adding those additional in order to prove felony
7 copyright infringement and the way the Court set out those
8 additional elements is accurate. There is some risk that we're
9 getting into too much detail with the jurors preliminarily, but
10 I don't object to the substance of that. And the Government
11 does not object to placing that into the substantive discussion
12 as the Court suggested --

13 THE COURT: Okay.

14 MR. MERRIAM: -- on Page 5 and the elements.

15 THE COURT: Hold on just a moment.

16 (Court conferring with courtroom administrator.)

17 THE COURT: And I don't have in front of me -- I'm just
18 typing this in now -- the document regarding the additional
19 elements.

20 So, Mr. Brown, repeat them for me because I just
21 don't -- I can't pull up the document right now.

22 MR. BROWN: The Government will correct me if I'm
23 wrong. It's 10 or more copies of copyrighted works in a 180-day
24 period having a total retail value of more than \$2,500.

25 MR. MERRIAM: And I know --

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1 THE COURT: I'm sorry. 10 or more copyrighted works --

2 MR. MERRIAM: Your Honor, I know that this would never
3 come back to bite us given counsel's read of it. "10 or more
4 copies of one or more copyrighted works."

5 THE COURT: "10 or more copies" -- okay. That's why we
6 do this.

7 MR. MERRIAM: Yep.

8 THE COURT: "10 or more copies of one or more
9 copyrighted works," and then these works -- I'm sorry?

10 MR. MERRIAM: Total retail value --

11 THE COURT: Oh, there's a time -- the time frame.

12 MR. MERRIAM: Yeah, I apologize. Within a 180-day time
13 period.

14 (Pause.)

15 THE COURT: So I'm going to put in "the defendants
16 conspired to" -- because that's just about the conspiracy
17 count -- "the defendants conspired to reproduce 10 or more
18 copies of one or more copyrighted works within"?

19 MR. BROWN: 10 or more copies --

20 MR. MERRIAM: 10 or more copies of one or more
21 copyrighted works --

22 THE COURT: Within a 180-day period and?

23 MR. MERRIAM: The exact wording is "with a retail value
24 of more than \$2,500" -- "total retail value of more than
25 \$2,500."

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1 THE COURT: And so these copyrighted works or their...
2 Had a total retail value of \$10,000 or more?

3 MR. MERRIAM: \$2,500.

4 THE COURT: I'm sorry. What was it?

5 MR. MERRIAM: \$2,500 or more.

6 THE COURT: Oh, okay.

7 Okay. So the way that it will read now is that same
8 section that we have at the top, then it's going to say: "In
9 this case, the Government is alleging the defendants engaged in
10 a conspiracy specifically to commit felony criminal copyright
11 infringement. This means the Government must also establish
12 beyond a reasonable doubt the following elements: first, the
13 defendants conspired to reproduce 10 or more copies of one or
14 more copyrighted works within a 180-day period and, second,
15 these copyrighted works or the copy of these copyrighted works
16 had a total retail value of \$2,500 or more."

17 MR. MERRIAM: "More than" is the wording in the
18 statute. That -- I think the Court -- Court's instruction
19 captures that, but --

20 THE COURT: "Had a total retail value of more than."
21 I'm happy to -- that's all right. We can do detail. Okay.

22 And then it will proceed to that final sentence, which
23 is: "To find the defendant guilty of conspiracy to commit
24 felony criminal copyright infringement, you'd need to find the
25 defendant successfully completed" -- there's that rest of that

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1 section there.

2 MR. MERRIAM: And I apologize, Your Honor, just
3 scrolling up just a bit. Did the Court say "10 or more copies,"
4 or was there a different formulation?

5 THE COURT: "The defendants conspired to reproduce 10
6 or more copies of one or more copyrighted works within a 180-day
7 period."

8 MR. MERRIAM: Thank you, Your Honor.

9 THE COURT: All right.

10 All right. There we go.

11 And, Mr. Brown, does that capture what you are
12 suggesting?

13 MR. BROWN: Yes. Thank you.

14 THE COURT: All right.

15 Okay. We'll make that adjustment.

16 Anything else?

17 MR. TATE: Yes, Your Honor. On behalf of Mr. Dallmann,
18 I did find the passage with respect to the copyright
19 infringement counts. We had submitted under Document 357 a
20 supplemental instruction that captured the whole statute that
21 reads: "Evidence of reproduction or distribution of copyrighted
22 work by itself is not sufficient to establish willful
23 infringement of a copyright." That's -- that comes right out of
24 the statute itself, 17 U.S.C. 506(a)(2).

25 To the extent that the Government -- that the Court is

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1 giving an instruction on 506, we would ask that that 506 be --

2 THE COURT: Hold on. Let me pull up yours --

3 MR. TATE: Okay.

4 THE COURT: -- see if I can find your -- which document
5 is it again?

6 MR. TATE: 357.

7 (Pause.)

8 THE COURT: Where -- okay. Hold on.

9 (Court conferring with courtroom administrator.)

10 THE COURT: So I'm sorry, Mr. Tate. I'm coming back to
11 you. Your instruction is not a full instruction. It's just a
12 one sentence. Where's the rest of the instruction this should
13 be embedded in? Because that -- I appreciate that, but I also
14 have to explain when the reproduction is a violation. So I
15 guess my question to you is, where would you want me to put
16 this?

17 MR. TATE: Right on Page 5, right -- the first part of
18 the instruction is given, which is 506(a)(1). I'm just saying
19 that since that's being given pre-evidence and preliminarily
20 that 506(a)(2), which is part of the same statute, should be
21 included in that.

22 THE COURT: Mr. Merriam?

23 MR. MERRIAM: So, Your Honor, with apologies to
24 everyone here, but we have Title 17, the copyright code, we have
25 Title 18, the criminal code, and their -- the interplay here.

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1 This is -- I think it's best described as an affirmative defense
2 that can be raised in the general discussion of copyright. So
3 if the Court were comfortable with the original proposed
4 instruction, here are the general elements of copyright
5 infringement, this could arguably go with it.

6 The Government would suggest this is -- there's more
7 possibility for confusion here. It's certainly something we can
8 raise in the final jury instructions and the Government won't
9 object to. But it's separate from the elements of the offense.

10 THE COURT: Well, we could certainly put it at the end
11 of the fourth element. I mean, it is to say -- I mean, because
12 it's obviously true that simply having something be reproduced
13 doesn't necessarily satisfy these elements, but the elements are
14 laid out. There actually are four elements there. And I think
15 the other aspect to this will be further definition.

16 But we can put that after the fourth element on that --
17 on Page 5. Would there be an objection to that, Mr. Merriam?
18 We can insert the sentence there.

19 MR. MERRIAM: We don't object to the language. It is
20 an accurate reflection of what's contained in 506.

21 THE COURT: And I'm saying we could just put it after
22 the four elements are read out. If you look at that -- the
23 instruction we have, it would just come after the fourth
24 element.

25 MR. MERRIAM: Yes. And so that would be before the

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1 Title 18 specific elements?

2 THE COURT: Yes. So it would say -- no, it would --
3 right. So we'd go through "The elements of criminal copyright
4 infringement are," and we'd go through the first four. And then
5 we'd put that sentence, and then we'd -- then move on to "In
6 this case, the Government's alleging the defendants agreed --
7 engaged in a conspiracy to commit felony criminal copyright
8 infringement. This means the Government must also establish
9 beyond a reasonable doubt" those elements.

10 So it would go, again, after the fourth element, but
11 before the insert which I just added based upon Mr. Brown's
12 request.

13 MR. MERRIAM: Court's indulgence.

14 (Prosecution conferring.)

15 MR. MERRIAM: Your Honor, this wades back into the
16 willfulness component --

17 THE COURT: But, Mr. Merriam, I'm going to ask you this
18 same question. Is it inaccurate in any way?

19 MR. MERRIAM: It's not inaccurate. It -- we would need
20 to revisit our position on the -- on the deliberate ignorance
21 and -- and willfulness with the other instruction.

22 THE COURT: That's fine. I mean, again, the purpose of
23 the instruction is to provide the jury with some idea of the
24 elements and the law that -- my goal is to make sure that they
25 are not inaccurate or they do not misrepresent, do not misstate

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1 the law. They will be provided with more detail in the end.
2 But this is to provide some context for the openings and the
3 receipt of the evidence. So absolutely, right, they will be
4 provided more information in the end as it relates to these
5 instructions.

6 MR. MERRIAM: Our concern -- and I'm not saying this is
7 an inaccurate statement of the law. It is verbatim from the --
8 Title 17. Our concern is that we will now insert an affirmative
9 defense into this without the fuller discussion of willfulness
10 that was dropped with the deliberate ignorance instruction that
11 the Court doesn't intend to give and the other components that
12 balance that.

13 THE COURT: Well, okay. Again, I think the conspiracy
14 instruction talks about how much or how little you need to know
15 and gives some context of what I understand the Government's
16 theory to be. And certainly I think the Government's going to
17 be arguing that these individuals were aware of and knew what
18 was happening in terms of the evidence I've seen for the
19 opening. So I agree with you, Mr. Merriam, that we will need to
20 provide more context, but, again, that's going to be detailed in
21 the end.

22 So I think it's fine as is, and certainly you can add
23 these instructions -- request instructions at the end of the
24 case. But I think we'll go with it as it is right now. Okay?

25 MR. MERRIAM: Thank you, Your Honor.

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1 THE COURT: All right.

2 Okay. Anything else?

3 So we received a couple of requests from specific
4 jurors. So Juror Number 61 -- the juror, Mr. Christin, that you
5 referenced not taking the oath -- had indicated to my clerk that
6 he doesn't want to be on the jury and that he's too busy. I'm
7 going to bring him out, obviously, and question him about this.

8 I'm not going to ask for you all to ask him any
9 questions, but if he is of a mind that he simply is not going to
10 want to be on the jury, then there's a chance that I would
11 obviously need to excuse him.

12 Now, I'm certainly contemplating whether or not I would
13 hold him in contempt or take other action against him.

14 But I think we need to address it before the openings,
15 obviously, to deal with this issue. I'll hear from counsel if
16 you have any particular suggestions, but I'm just going to bring
17 him out and question him at this point.

18 (Counsel conferring.)

19 THE COURT: Mr. Christin.

20 MR. CHRISTIN: Yes, Your Honor.

21 I think given what I put on the record yesterday and
22 what we're hearing today, if he's not willing to be a productive
23 member of the jury, take the oath, and deliberate and
24 participate, he should be stricken for cause.

25 THE COURT: Any other comments?

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1 (No response.)

2 (Court conferring with law clerk.)

3 MR. CHRISTIN: Your Honor, if I may just make one more
4 point for the record. I recall that Juror 61 did raise his hand
5 early on in the questioning and indicate that he had a conflict
6 that would not allow him to sit for the jury. And in reflecting
7 back on who's in the box now, my recollection is that he, I
8 think, is the only one that raised a conflict and that is
9 currently in the box. I just wanted to point that out to Your
10 Honor's attention.

11 THE COURT: Okay. All right.

12 Well, Darci, before we do that, let's see what he says,
13 Darci. Darci, That's all right. Let's bring him out first.

14 We'll deal with the oath first.

15 (Whereupon juror enters the courtroom.)

16 COURTROOM ADMINISTRATOR: First chair?

17 THE COURT: First chair. Do we have the microphone?

18 So, sir, I understand that you have a concern about
19 sitting on this jury. I mean, you've been sworn in as a juror.
20 You're under court order to be here as a juror, and I understand
21 that you raised an issue about that. I wanted to ask you about
22 that at this point in time.

23 A JUROR: Okay. You want me to raise my issues?

24 THE COURT: Yes.

25 A JUROR: So I forgot about a wedding I have to go to

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1 at the end of this month in L.A., so I have to be at that. I
2 also have --

3 THE COURT: What date is that and is that during the
4 week or on the weekend?

5 A JUROR: It's on the 28th, which I believe is a
6 Friday.

7 Then my kid is sick right now, so she's home alone.

8 THE COURT: I'm sorry. How old is your child?

9 A JUROR: Fourteen. So she's puking this morning. I
10 also just have -- I don't know if I can really do this.

11 THE COURT: I'm saying this to you because we went
12 through quite a process to select a jury.

13 A JUROR: Yes, I understand.

14 THE COURT: Right now you're -- you're under court
15 order now.

16 A JUROR: I understand.

17 THE COURT: I have different options here, and I'm not
18 saying that lightly, right? The Court can hold you in contempt,
19 in violation of a court order. It's not my intention to do that
20 necessarily --

21 A JUROR: Yeah.

22 THE COURT: -- without there being a good reason to do
23 that. But this is a long trial, and us potentially excusing you
24 creates significant inconvenience for us as relates to the
25 number of jurors that we have, which is why I went through that.

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1 We spent the whole day yesterday.

2 A JUROR: Yes.

3 THE COURT: And so it is a little concerning to me that
4 we're hearing this now when we could have selected someone else
5 yesterday.

6 The other thing that I want to ask you about is when
7 you -- we swore in the jurors, you did not take the oath, or at
8 least it didn't appear that you did. It didn't appear that you
9 said, "I do." Can you explain to me why that happened?

10 A JUROR: Why what?

11 THE COURT: Did you not take -- did you not say or
12 affirm -- when we swore the jury in, it looked like that you
13 actually didn't say anything, at least that's what I understand.

14 A JUROR: Yes.

15 THE COURT: Is that a misunderstanding that you didn't
16 take the oath, or did you intentionally not take the oath?

17 A JUROR: I didn't say anything.

18 THE COURT: And why is that?

19 A JUROR: That's because I wanted to talk to you about
20 my concerns.

21 THE COURT: And you were concerned that if you took the
22 oath, what would happen?

23 A JUROR: I would be, like, abided.

24 THE COURT: On the jury?

25 A JUROR: Yes.

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1 THE COURT: Okay. Well, that actually already happened
2 because you were already impaneled as a juror. So taking the
3 oath or not is really more or less a violation of the duty of a
4 juror and, again, potentially something that you can be held in
5 contempt for. I'm saying all this to you because obviously I
6 have to explore this as it relates to jury service.

7 If you're saying to me that you do not want to
8 participate in the jury because of your schedule, I will take
9 that into consideration. But it may involve other steps that I
10 have to consider as well. I wanted to give you a chance to
11 explain yourself, but I have to tell you in my years on the
12 bench, this is probably the first time that this has ever
13 happened like this without there being an emergency when I just
14 picked a jury.

15 Now, you are here today. You came on time. I
16 appreciate the fact you came for that. But it sounds to me like
17 you're saying that you don't want to be on the jury. But other
18 than these particular dates, can you explain to me why it is
19 that you can't serve?

20 A JUROR: Number one, I have a very busy job. I go --
21 my phone goes off all day long. I know that's not, you know,
22 going to maybe change you guys' minds, but I have a lot of
23 responsibility at work that I have to kind of be there for.

24 THE COURT: Well, you know, there are very specific
25 laws about employers and their ability to -- or not take action

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1 against individuals who are on jury service.

2 A JUROR: Yes.

3 THE COURT: As other individuals have requested, I
4 certainly will write letters, and if an employer has a question,
5 I'm happy to order them to appear. If your employer had
6 questions about your service --

7 A JUROR: Yeah.

8 THE COURT: -- I'd be happy to order your employer to
9 appear in court and explain to me why you should potentially be
10 excused or why they would be violating the law.

11 A JUROR: Yeah.

12 THE COURT: I'm happy to do that --

13 A JUROR: I also --

14 THE COURT: -- if you think that's something that would
15 be appropriate. I mean, because there are -- law explicitly
16 prohibits employers from taking action against certain employees
17 because of jury service. And if an employer is doing that, I
18 want to know about that.

19 A JUROR: Well, they're not -- they're not threatening
20 me or anything like that. It's just, like, I have stuff I've
21 set up over the next month because I do have a restaurant that I
22 kind of have to be there for, that this is going to kind of, you
23 know, throw everything off. Like, I have a breakfast tomorrow
24 morning that I have to be there at, like, 8:30 in the morning
25 for.

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1 THE COURT: And remind me again, where do you work?

2 A JUROR: El Dorado Cantina.

3 THE COURT: El Dorado Cantina. Okay.

4 Okay. Well, I need to take this information into
5 consideration. Is there anything else you want me to consider
6 as it relates to what I should do at this point in time?

7 A JUROR: Basically I just don't know how much I can
8 put forth to this. I have -- I'll be here all day. Then I have
9 to go to work at night now since I can't do it during the day.
10 So I'll just be kind of -- I don't know if I can put my best
11 focus and, you know, be able to give what I need to give to be
12 fair to everyone.

13 THE COURT: Okay. Well, let me take that into
14 consideration. I will let you know what I'm going to do. But
15 thank you. I appreciate your comments.

16 A JUROR: Thank you.

17 (Whereupon a juror exits the courtroom.)

18 (Court conferring with courtroom administrator.)

19 THE COURT: I'll hear from counsel on this.

20 Mr. Christin?

21 MR. CHRISTIN: Thank you, Your Honor.

22 Your Honor, I think he's made it very clear that he
23 does not want to participate in this jury. It's the
24 Government's concern that he would give whatever verdict he
25 would want in order to get off the jury the soonest. He hasn't

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1 taken the oath, and we think he should be struck for cause.

2 THE COURT: Is there any objection to the Court
3 striking this juror for cause?

4 MR. TATE: No objection on behalf of Mr. Dallmann.

5 THE COURT: Any objection from anyone else? I don't
6 see any.

7 All right.

8 (Court conferring with courtroom administrator.)

9 THE COURT: All right. I'm going to, then, strike him.
10 That would move our first alternate into position. But we also
11 have heard from two other jurors. We need to explore this as
12 well. One of the jurors -- I am going to ask her about this --
13 says that she may have seen or recognized Mr. Courson
14 previously, but she's not sure. So I'm going to ask her about
15 that and bring her out.

16 And so I'm not going to ask for you all to question
17 this juror, but I'm just going to ask her if she's clear about
18 whether or not she's seen him or how she may have seen him or
19 what the nature of the interaction is. She communicated to my
20 clerk she just wasn't sure, and so I'm going to ask her about
21 that.

22 Ms. Armeni, anything else you would suggest that I ask?

23 MS. ARMENI: No, Your Honor. I mean, depending on what
24 her first -- answer to your first question is, I think that will
25 dictate.

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1 THE COURT: Okay. She also said that she's had some
2 anxiety about serving on the jury, so...

3 MS. MURALIDHARA: Judge, which juror is this?

4 THE COURT: We'll see what she says.

5 This is Juror Number 57.

6 MS. BLISS: Is that Seat 2?

7 MS. ARMENI: Your Honor, can I inquire something? And
8 I don't know -- I know Ms. Smith went back there. Are these
9 jurors -- did they pull Ms. Smith aside and tell her this? I
10 guess my concern -- okay. She's shaking her head yes.

11 THE COURT: Yes, they contacted --

12 MS. ARMENI: Her directly.

13 THE COURT: -- they contacted my deputy, and I said,
14 "This is not the way for you to contact the Court." So I'm
15 communicating this to you all, what was communicated to me
16 through Ms. Smith.

17 But it seems that there was some discussion this
18 morning and some of them had voiced potentially their
19 displeasure about being on the jury. I don't know if that's
20 part of the conversation. That part, I don't know anything
21 about. I just know that what I was told, three of the jurors
22 contacted Ms. Smith and asked to communicate the information I'm
23 communicating to you to me.

24 (Court conferring with courtroom administrator .)

25 MS. MARTIN: And, Your Honor, for -- when Juror -- I

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1 believe it's Juror Number 2 -- 57, in Position Number 2, was
2 also the one who had select words when the Court called her name
3 as she approached, along with her physical response to being
4 selected as one of our jurors.

5 THE COURT: Okay.

6 MR. MISHLER: Your Honor, I apologize. So I just have
7 a brief concern. I don't know if this is what Ms. Armeni was
8 talking about. If that juror that we've already spoken to was
9 back there talking about he has conflicts --

10 THE COURT: We don't -- we have no idea what they're
11 talking about.

12 MR. MISHLER: I know. I just have a concern that if he
13 was back there discussing "I have conflicts. I'm going to try
14 to get off the jury," and then the jury members see him no
15 longer on the panel, we may see, like, five more of these. So
16 if that is what happened, I don't want to end up --

17 THE COURT: And what would you suggest that I do about
18 that, Mr. Mishler?

19 I mean, one of the things I certainly could potentially
20 do, which the Court is contemplating, is I have the ability to
21 hold him in contempt and make him sit through this jury and make
22 him sit potentially in the lockup. Now, I've never done that in
23 my history of sitting on the bench. I'm not generally inclined
24 to do that because I think that jury duty should be something
25 that people want to participate in. And so my inclination,

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1 obviously, is for the case to proceed as is. And I hate to use
2 punitive coercive measures to keep people on the jury or as an
3 example.

4 So I agree with you that we may have to take some
5 action, but I can't stop them from talking about what they're
6 talking about beforehand. We could bring them out, and I
7 could -- if you want me to, to say, "Look, we have particular
8 instances in this case, but I expect you to uphold your oath and
9 remain on this jury. If I need to take steps to do so, I will."
10 But, again, that could also, I think, have a negative impact on
11 the jury. So I'm not sure what you would suggest that I do in
12 this instance.

13 MR. MISHLER: I understand, Your Honor. The only thing
14 I could suggest would be to inquire of that juror whether they
15 discussed that before we excuse him so that we have some idea of
16 who might have been exposed to it ahead of time.

17 THE COURT: And then what would I do if they were
18 exposed?

19 MR. MISHLER: Just so we're aware.

20 THE COURT: And then -- but, again, even if we're aware
21 or not aware, I'm not sure it matters at this point what I do.

22 Well, hold on a second.

23 (Court conferring with courtroom administrator.)

24 THE COURT: Mr. Christin.

25 MR. CHRISTIN: Yes, Your Honor. I just wanted to

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1 quickly response in that just because the Court may or may not
2 be contemplating striking Juror 61, I think everybody's -- each
3 of these jurors is uniquely situated and is going to have
4 different circumstances, obviously. And I think with this
5 particular juror refusing to take the oath and raising his
6 conflict yesterday and being sat and then -- and then his
7 statements today put him in a box. And that doesn't necessarily
8 mean that other people are going to be as similarly situated as
9 he is, whether he did or did not raise his concerns with the
10 other jurors.

11 So just because we strike one juror doesn't mean we
12 need to strike three more, I guess, is the Government's point.

13 THE COURT: Well, what I'm inclined to do is this,
14 because I think there may be issues. I am inclined to defer
15 ruling on 61 and keep him on the jury and say, "You're ordered
16 to stay here and I'm not excusing you," and then we can revisit
17 the issue, but I don't want to start a stampede to the door. So
18 he'll have to sit here all day as he agreed to do, and then I'll
19 decide maybe tomorrow or the day after or at the end of the
20 week. We can raise this issue. We've got four weeks of trial.
21 So for now, I'm going to order him to stay on the jury and to
22 sit.

23 MR. CHRISTIN: That's fine, Your Honor. But I think
24 given --

25 THE COURT: We'll address the issue. He hasn't

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1 deliberated yet, and I'm going to order him not to discuss his
2 concerns with the other jurors about that. But he will, I
3 think, remain on the jury at least for today.

4 Is there any objection to that?

5 MR. MISHLER: No, Your Honor.

6 MR. TATE: Your Honor, I think the better solution
7 would be, as we discussed, is to strike him. He could be -- we
8 don't know what might happen in the jury room. That's the
9 concern. You got a disgruntled juror now who clearly doesn't
10 want to be here. He could somehow influence the other jurors
11 even by body language.

12 THE COURT: But that could happen, Mr. Tate -- if I
13 instruct him not to do -- to discuss it with the jurors, what
14 else would you want me to do in this case?

15 MR. TATE: I just don't know --

16 THE COURT: I think at least for today, he's agreed to
17 be here today. He should be required to serve today. Because
18 obviously there's been some discussion -- I don't know what the
19 discussion is. And, again, I'm not inclined to inquire because
20 I think there is real issues about the Court inquiring about
21 juror discussions at this point in time.

22 So if you're saying that you think that I should just
23 go ahead and excuse him, I can excuse him after -- after today.
24 I can simply say, "I wanted to hear from all of the jurors and
25 I'll defer ruling on that so that I can consider that." I don't

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1 know that that would necessarily impact it. I would simply say
2 to him, "For now, I'm going to consider this. I will let you
3 know at the end of the day or tomorrow what I decide," as it
4 relates to his jury service. He did show up today. He did
5 explain his reasons today. So that tells me that he understands
6 that he has an obligation. And he will serve.

7 But I don't think there's any harm or prejudice to
8 telling him for now that he's on the jury and I'll defer ruling
9 on his request until the end of the day or tomorrow. In that
10 case, I'm not saying -- I'm not saying that I'm going to order
11 him to stay on the jury. I'm just going to say I appreciate his
12 request. I'm going to consider it and defer ruling on it until
13 we get through the day. And that way, he'll know about that
14 today or tomorrow. And then we can discuss it.

15 MR. TATE: That's in the Court's sound discretion.

16 THE COURT: All right.

17 Any other comments? Again, we still have two other
18 jurors we've got to bring out. We haven't even opened yet.

19 Ms. Armeni?

20 MS. ARMENI: Your Honor, I was just going to ask that,
21 but perhaps we --

22 (Court reporter clarification.)

23 MS. ARMENI: I was just going to suggest what I think
24 the Court's doing, that until any ruling is made, let's hear
25 what the other two have to say and then we can, I think, take

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1 them all together and decide at that point.

2 THE COURT: Okay. Okay. Yes, I think that makes
3 sense.

4 So let's bring out Juror Number -- who is it -- 57. 61
5 is still back there, right. So what I am going to instruct my
6 clerk to tell Juror 61 is that the Court hasn't ruled yet on his
7 request.

8 All right?

9 COURTROOM ADMINISTRATOR: Okay.

10 THE COURT: Go ahead.

11 (Pause.)

12 (Whereupon a juror enters the courtroom.)

13 THE COURT: Hello.

14 A JUROR: Hi.

15 THE COURT: Hi. I understood you had communicated to
16 my deputy that you thought you might know one of the defendants,
17 but you weren't sure.

18 A JUROR: Yeah, I just want to make sure. Maybe I'm
19 just overthinking. I'm a little overwhelmed.

20 THE COURT: Well, that's all right. You thought it was
21 Mr. Courson? Is that what you thought?

22 A JUROR: Possibly. He just looks like somebody that I
23 probably interacted with before.

24 THE COURT: So let me ask you a question. Do you have
25 a specific recollection of interacting with him?

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1 A JUROR: He just looks like an old -- somebody I used
2 to work with at a previous employer. That's just -- he just
3 looks like him.

4 THE COURT: So other than the fact that he looked like
5 someone who you may have worked with, you don't know whether or
6 not -- and I'm sorry. Which employer was this?

7 A JUROR: This was with -- at Target.

8 THE COURT: Target. Okay. Target stores here in Las
9 Vegas?

10 A JUROR: Correct.

11 THE COURT: Okay. And when was that approximately?

12 A JUROR: Uhm. I left the company almost two years
13 ago, so a little bit before that, maybe four.

14 THE COURT: And to the extent that you might have
15 interacted with Mr. Courson at all, do you remember those
16 interactions at all?

17 A JUROR: No, not really.

18 THE COURT: Okay. So you're just saying he looked
19 familiar.

20 A JUROR: Yeah, he just looks familiar. That's all.

21 THE COURT: Okay. And the fact that he looked
22 familiar, would that in any way prevent you from being fair and
23 impartial in this case?

24 A JUROR: Uhm. It might be a possibility.

25 THE COURT: How would it be a possibility if you didn't

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1 really remember him?

2 A JUROR: I just remember maybe he looks like somebody
3 who has the same name who worked at a certain department
4 similar. So I just -- just seeing him is just --

5 THE COURT: You're saying it's disorienting that you
6 saw him.

7 A JUROR: Yeah.

8 THE COURT: But I'm saying, right, why would that make
9 it difficult to be fair and impartial if you don't really
10 remember who he was?

11 A JUROR: Oh, that's true. Yeah. You're right.

12 THE COURT: I'm saying if you had a specific
13 recollection, it was a positive or a negative one, then that
14 might sort of influence it. I'm just trying to figure out
15 whether or not it's just the memory of being familiar with the
16 face or did you have a specific positive or negative
17 interaction?

18 A JUROR: It's just the memory of, like, the face.
19 That's it.

20 THE COURT: Okay. But you're not even sure about that
21 exactly.

22 A JUROR: Yeah, I'm not sure about that.

23 THE COURT: So if I told you, again, to be fair and
24 impartial and just consider the facts of this case, do you think
25 you could do that?

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1 A JUROR: Correct.

2 THE COURT: Do you think you could do that?

3 A JUROR: Yeah.

4 THE COURT: Okay. All right. Perfect. Thank you.

5 A JUROR: Thank you.

6 THE COURT: No, no. Here's the other thing. It's
7 important that you clarify. So I don't want you to feel upset
8 or nervous about the fact that you communicated the information.
9 It's better for us to have information --

10 A JUROR: Okay.

11 THE COURT: -- and to be able to ask you questions
12 about it than for you to be wondering about whether or not you
13 should have communicated it. Okay?

14 A JUROR: Okay. Sorry.

15 THE COURT: No, don't apologize. Again, it's important
16 for us to have the information. Thank you for letting us know.

17 A JUROR: Okay. Thank you.

18 THE COURT: Uh-huh.

19 (Whereupon a juror exits the courtroom.)

20 THE COURT: Ms. Armeni, I don't know that I would see a
21 reason to excuse this juror, but I'm happy to hear from you on
22 this.

23 MS. ARMENI: No, but I will tell the Court that he does
24 work at Target.

25 THE COURT: Okay. Well, again -- I just dropped my

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1 pen.

2 Are you making a specific request at this time?

3 Because based upon what she said, I didn't see that she had --
4 she didn't really have a positive or negative association one
5 way or the other. And she said she could be fair, she just
6 wanted to communicate that, which I think is honest. But the
7 fact that she may have interacted, I don't think in and of
8 itself would excuse her.

9 MS. ARMENI: I guess the concern is I don't know what
10 the interactions would be, if they were positive or negative
11 because that --

12 THE COURT: But I asked her, right?

13 MS. ARMENI: Right.

14 THE COURT: Unless you thought there was something else
15 I should ask her, she actually specifically seemed to say, "I
16 don't have a particular recollection of him one way or the
17 other." And when I asked her could she be fair and impartial,
18 she said yes.

19 So is there a particular concern beyond that,
20 Ms. Armeni?

21 MS. ARMENI: No, I just wanted to alert the Court that
22 the person she thought she may have saw was probably the person
23 she saw.

24 THE COURT: Okay. Are you saying you're asking her to
25 be struck for cause?

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1 (Defense conferring.)

2 MS. ARMENI: Court's indulgence.

3 THE COURT: Sure.

4 (Defense conferring.)

5 MS. ARMENI: Your Honor, we are making a motion to move
6 for cause.

7 THE COURT: On what grounds?

8 MS. ARMENI: Well, we're concerned on the fact that she
9 did recognize Mr. Courson and that knowledge of him, we're
10 concerned, will not give him a fair trial.

11 THE COURT: Based upon? Okay. So you're saying the
12 knowledge of him by itself would mean that he's not going to get
13 a fair trial, even without her saying one way or the other --

14 MS. ARMENI: Well, once she realizes that it is the
15 person that she thought it was, I think there is the ability or
16 that she may start remembering exactly how she knew him. Right
17 now she's still wavering because she doesn't know.

18 THE COURT: So you're saying it would be different if
19 he didn't work at Target.

20 MS. ARMENI: Absolutely.

21 THE COURT: Well, but she wouldn't know that either
22 because we're going to communicate that to her.

23 MS. ARMENI: Well, we are.

24 THE COURT: Okay. Well, tell me about that because
25 that's --

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1 MS. ARMENI: We are. No, we are going to communicate
2 that to her because -- or to the jury. I shouldn't say "her."
3 We are going to communicate that. That's going to be in opening
4 statement. The Government has stipulated, we have stipulated to
5 -- that Doug works at Target. It's an exhibit.

6 THE COURT: Okay. Well, okay. That's information that
7 I needed to have, then. So you're saying at some point she's
8 going to realize that this is the person that she does know, and
9 then at that point when she's on the jury, we can't really go
10 into what her recollection is because she then might start
11 recalling interactions she had --

12 MS. ARMENI: That's correct, Your Honor.

13 THE COURT: -- over the course of the case.

14 MS. ARMENI: If we weren't bringing up Target, then I
15 think you're right, it may be different, but we are going to be
16 specifically talking about that.

17 THE COURT: Mr. Christin.

18 MR. CHRISTIN: Thank you, Your Honor.

19 Ms. Armeni is correct that the Government has
20 stipulated or is agreeing with Ms. Armeni. We're not contesting
21 that Mr. Courson worked at Target.

22 I think there are two important things that came out of
23 the Court's questioning with Juror Number 57, I think it was.
24 Number one is she said that this interaction took place four or
25 five years ago and that she doesn't really have any specific

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1 recollection of what that interaction -- of an actual
2 interaction, just that she recognized him. The evidence in this
3 case is from 2007 to 2017, which is seven years ago,
4 significantly beyond what her memory was.

5 I do not believe that she needs to be stricken for
6 cause, particularly because Your Honor asked her if she could be
7 fair and impartial and she said yes.

8 THE COURT: Well, Mr. Christin, let me ask you this
9 question, because the issue that comes up is that once she hears
10 that, in fact, it is Mr. Courson that she remembers,
11 potentially --

12 MR. CHRISTIN: Or could be Mr. Courson. We don't know.

13 THE COURT: Or could be Mr. Courson. But there's a
14 fair chance --

15 MR. CHRISTIN: Yes.

16 THE COURT: -- that it is him. She could then start to
17 have, which would be natural, recollections about
18 interactions --

19 MR. CHRISTIN: We should I think --

20 THE COURT: -- which -- I would not want to call her in
21 here over the course of the trial and say, "What do you remember
22 now," right? "What do you remember this week," right? I'm just
23 saying, it's natural that she would start to think about this,
24 right, or maybe even talk to people about it. And so that's the
25 concern for me, is that --

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1 MR. CHRISTIN: So --

2 THE COURT: -- I could address it by I guess
3 potentially instructing her not to talk to anyone about it or we
4 could tell her that, in fact, she probably did see Mr. Courson
5 there and then say would that impact her interactions.

6 MR. CHRISTIN: I think that's entirely appropriate. I
7 think if the Court calls her back out and asks her, "If you did
8 find out that Mr. Courson worked at Target, would that affect
9 the answer that you gave me previously about being fair and
10 impartial? And if I instruct you not to speak to other jurors
11 about Mr. Courson working at Target, could -- would you listen
12 to that?" I don't think it's uncommon that a juror has seen a
13 defendant around, and I --

14 THE COURT: Yes, but this is different if she worked
15 with someone.

16 So here's what I'm going to do. I think I'm going to
17 also -- because, look, I want to at least get the openings done
18 today -- I'm going to defer ruling on this, too. Because the
19 other thing is I don't want there to appear to be, like, a mass
20 exodus from the jury before we even started the openings. So
21 I'm going to defer ruling on her particular position on the jury
22 because I don't think her being on there for one day is going to
23 have necessarily an impact, but I also want to just think about
24 the arguments that counsel have and then we'll make the
25 determination afterwards.

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1 MR. CHRISTIN: Thank you, Your Honor.

2 We would just ask that any ruling be preceded by
3 additional questioning. And we can ask her which Target she
4 thinks it was and that may clarify matters as well.

5 THE COURT: Okay.

6 All right. Darci.

7 (Court conferring with courtroom administrator.)

8 THE COURT: So, lastly, Juror Number 72 communicated to
9 my clerk that -- to my deputy that it is expensive for her to
10 put her child in day care and asked if we could pay for that or
11 reimburse her for that. My deputy told her that we could not.
12 She would get what she gets as it relates to witness
13 reimbursement pursuant to the statute, but we could not
14 reimburse her for that. And she just communicated it's more
15 expensive than she thought it was going to be, but she really
16 wanted to be on the jury.

17 I don't see a basis to bring her out. She didn't
18 request to speak to me, but I wanted to communicate this
19 information to all of you because it was communicated to me.

20 So unless there is an objection, I'm not going to bring
21 her out. If there's further communication about her ability to
22 serve based upon this particular impediment, then we can address
23 it.

24 So does any party want me to bring her out to question
25 her further?

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1 MR. CHRISTIN: No objection, Your Honor.

2 THE COURT: I don't see anyone indicating that they
3 want me to do that.

4 So what I do think I should do is before we start, I
5 will bring out Juror 61 and Juror 57 and tell them I've
6 considered the information that they've provided. I'm not going
7 to rule on it right now. I'm going to defer ruling on it, but
8 I'm going to instruct them not to discuss these matters with
9 other jurors during their time in the jury room. Is there any
10 objection to me doing that?

11 MR. CHRISTIN: No objection, Your Honor. Just would
12 inquire with the Court as to procedurally whether 61 should be
13 asked to take the oath again, or for the first time.

14 MR. MISHLER: If that's un- --

15 THE COURT: Well, and that's a fair point. I mean, I
16 think what I can do, which I will do, is I'm going to tell him
17 I'm going to rule on his request to be relieved from the jury,
18 but I am going to order him to take the oath. If he refuses to
19 do so, then that's then something that I have to deal with. But
20 I think it's appropriate. So for 61, I'm going to tell him that
21 he does need to take the oath, that I'm going to consider his
22 request to be off the jury, but he needs to take the oath and
23 I'll defer ruling on that.

24 And for 57, I will tell her that I'm considering the
25 information that she's provided and I'm going to defer ruling on

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1 that, but she's ordered not to discuss it with the other jurors.

2 Any objections to that course of action by the Court
3 for those two jurors?

4 MR. MISHLER: I think it's understood, but I just want
5 to ask a clarifying question. On 61 when you do that with the
6 oath, you're going to do that while he's in here on his own,
7 right?

8 THE COURT: Yes.

9 MR. MISHLER: Then I have no objections, Your Honor.

10 MR. CHRISTIN: Your Honor, I think just with respect to
11 57, I don't think she was making a request. And so we would
12 just ask the Court not to say that there's going to -- that you
13 haven't figured out a ruling, but just instruct her to not talk
14 about this with other jurors.

15 THE COURT: Okay. Let's bring out 61, first.

16 (Court conferring with courtroom administrator.)

17 MR. TATE: Your Honor? Your Honor, just as a courtesy
18 to the Court ahead of it. My understanding is that jurors
19 don't -- some jurors for religious reasons don't have to take
20 the oath, but perhaps we should have standby counsel for him, in
21 the event he's going to be taken into custody, to discuss what
22 his options are.

23 THE COURT: Okay.

24 MR. TATE: And we could have some -- I don't think it
25 would be a conflict to have someone from our office --

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1 (Whereupon a juror enters the courtroom.)

2 THE COURT: Well, why don't we -- we'll see what
3 happens, Mr. Tate. I appreciate that.

4 MR. TATE: Okay.

5 THE COURT: So I just wanted to follow up with what we
6 talked about, which is I need some time to consider the
7 information you've given to me. Okay. And so I'm not going to
8 rule today on your request to be removed. But I do want you to
9 sit today. Excuse me. So we do need you to take the oath for
10 today, and I'll let you know about my ruling on you being
11 relieved later. But I do need you to take the oath since you're
12 on the jury. Okay?

13 So I'll just have them administer it, and then you'll
14 go back. And then what will happen is I'll let you know either
15 at the end of today or tomorrow what the ruling will be as it
16 relates to your request to be off the jury. Okay?

17 A JUROR: Okay.

18 THE COURT: All right. So if you could please stand
19 and raise your right hand.

20 (Whereupon juror is duly sworn.)

21 THE COURT: All right. And so, again, then what will
22 happen is -- as I said, I've heard the information you gave me.
23 I just need to consider that and the law. And then I'll let you
24 know either at the end of today or tomorrow as relates to
25 whether or not you would stay on the jury after today. Okay?

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1 A JUROR: Yes.

2 THE COURT: Okay. The other thing is I don't want you
3 to and I'm going to direct you not to discuss your personal
4 request as it relates to being released from the jury with any
5 other jurors at this time.

6 A JUROR: All right.

7 THE COURT: All right. Thank you.

8 A JUROR: Thank you.

9 THE COURT: Uh-huh.

10 (Whereupon a juror exits the courtroom.)

11 MR. BROWN: Your Honor, if we're going to do two hours
12 or so of opening statements, could I ask for a short break
13 before that?

14 THE COURT: Sure. Who would have anticipated we would
15 be doing this? So --

16 COURTROOM ADMINISTRATOR: Do you want 57, then?

17 THE COURT: Yes. Well, hold on one second. So what
18 we'll do is we'll take 57. We'll take a short break. I haven't
19 even been able to print out the instructions yet that we
20 discussed. And then we'll come back and we'll open. But we're
21 not going to take our lunch break, but we'll take 10, 15 minutes
22 for people to be able to use the restroom, and then we'll come
23 back.

24 MR. BROWN: Great. Thank you.

25 THE COURT: All right.

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1 (Whereupon a juror enters the courtroom.)

2 THE COURT: Hello again.

3 A JUROR: Hey there.

4 THE COURT: Is that on? It's not on.

5 A JUROR: Hi.

6 THE COURT: Hi. I wanted to say again, thank you again
7 for bringing the information to my attention. The only thing I
8 wanted to let you know is that it's important that you not
9 discuss your recollections or not regarding Mr. Courson with
10 other jurors. And to the extent that you do or don't recall
11 him, I don't want you to discuss that with any other jurors.
12 Okay?

13 A JUROR: Okay.

14 THE COURT: All right. And I appreciate you sharing
15 the information with us. Okay?

16 A JUROR: Okay.

17 THE COURT: All right. Thank you.

18 A JUROR: Thank you.

19 (Whereupon a juror exits the courtroom.)

20 THE COURT: Okay. I know we're requesting -- so
21 basically let's take five, ten minutes, and then we'll come back
22 and open. So I just want to ask, though, because I'm trying to
23 figure out lunch break time, how long we anticipate our openings
24 to actually be.

25 Mr. Christin?

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1 MR. CHRISTIN: Thank you, Your Honor. I would
2 anticipate approximately 20 minutes.

3 THE COURT: Twenty minutes for the Government.
4 Mr. Tate?

5 MS. MARTIN: Twenty, Your Honor.

6 THE COURT: Twenty.

7 Ms. Armeni?

8 MS. ARMENI: Ten.

9 THE COURT: Ten.

10 Ms. Bliss?

11 MS. BLISS: Your Honor, I would say about 15 to 20, but
12 more --

13 THE COURT: Let's call it 20.

14 MS. BLISS: -- 15. Okay. Thank you.

15 THE COURT: Okay.

16 Ms. Muralidhara? Mr. Marsh?

17 MR. MARSH: About the same.

18 THE COURT: About 20?

19 MR. MARSH: Probably about 15.

20 THE COURT: Mr. Brown?

21 MR. BROWN: Ten, Your Honor.

22 THE COURT: Ten?

23 MR. BROWN: Maybe eight.

24 (Court conferring with courtroom administrator.)

25 THE COURT: Okay. So we're about to take a break, but

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1 here's what's going to happen. We'll take basically a five,
2 ten-minute break. We'll come back at, like, 12:05. Okay? And
3 then the Court will do the preopening instructions. The
4 Government will open.

5 We'll need to take about, at that point, a five or
6 ten-minute break to swap out for the court reporters, which will
7 also probably be about an hour or so, so that we can take a
8 bathroom break then, and then the defendants will open.

9 We may take another break after that, and then we'll
10 start with witnesses, because we're not going to necessarily
11 finish with the direct today, but we'll start it at least today.
12 Okay?

13 Any questions about that, Mr. Christin?

14 MR. CHRISTIN: Just logistically, Your Honor, would
15 Your Honor object to me slightly tilting that very gently for
16 the six of us that are going to be up there so we can look at
17 the jurors?

18 THE COURT: So here's my rule about openings. You can
19 leave the podium if you have the lapel mic, but you cannot cross
20 in front of -- let's just say where this table is right here --
21 right there, that's what you have to stop, right. So you can
22 get all the way up there, but you can't go up and put your hands
23 on the railing. Okay?

24 MR. CHRISTIN: And can we twist this to stand at the
25 podium for the microphone?

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1 THE COURT: Well, as long as we don't have any wiring
2 come loose and Ms. Smith helps you with that, yes, and she can
3 do that in the next five, ten minutes certainly.

4 MR. CHRISTIN: Thank you, Your Honor.

5 THE COURT: All right. Thank you. We'll be in recess.
6 I'm going to stay here while we finish on the instructions.

7 (Recess taken at 11:54 a.m.)

8 (Resumed at 12:10 p.m.)

9 THE COURT: Please be seated.

10 (Court conferring with courtroom administrator.)

11 THE COURT: Okay. We are back on the record here.

12 I'm going to bring the jurors out and instruct them,
13 and then we'll have the Government open. Take a short break.
14 And then have Defendants open, and then we'll take our lunch
15 break. Okay?

16 COURTROOM ADMINISTRATOR: Ladies and gentlemen, please
17 rise for the jury.

18 (Whereupon jury enters the courtroom at 12:14 p.m.)

19 THE COURT: Oh, you all can take your seats. We wait
20 for you all to be seated. We stand out of respect for your
21 service.

22 Please be seated. So thank you all for being here. I
23 will tell you, I hope you enjoyed the breakfast pizza. We
24 cannot promise that every day. That was a special treat from
25 the court staff today, but we will try to have sweets and

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1 coffees and things in there for you in the morning.

2 I appreciate your patience. We had a few issues that
3 we had to deal with, but I thank you all for being on time. I
4 heard from all of the court staff that you all were able to say
5 the magic words this morning, "Judge Boulware's trial." That's
6 why you all were able to get in. And so I appreciate, again,
7 you all being here on time and your patience, but now what's
8 going to happen is we're going to start hearing the evidence in
9 the case. Before we do that, I'm going to give you some
10 instructions. Okay?

11 You can take notes or not if you want to on the
12 instructions. I'm going to give you more detailed instructions
13 in the end, but I'm going to read through these preliminary
14 instructions, and then we'll hear opening statements. Okay?

15 You are now the jury in this case, and I want to take a
16 few minutes to tell you something about your duties as jurors
17 and to give you some preliminary instructions. And the end of
18 the trial, I'll give you more detailed instructions that will
19 control your deliberations. When you deliberate, it will be
20 your duty to weigh and to evaluate all of the evidence received
21 in the case and, in that process, to decide the facts.

22 To the facts as you find them, you will apply the law
23 as I give it to you, whether you agree with the law or not. You
24 must decide the case solely on the evidence and the law before
25 you and must not be influenced by any personal likes or

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1 dislikes, opinions, prejudices, or sympathy. Please do not take
2 anything I may say or do during the trial as indicating what I
3 think of the evidence or what your verdict should be. That is
4 entirely up to you.

5 This is a criminal case brought by the United States
6 Government. The Government alleges that the defendants:
7 Mr. Kristopher Dallmann, Mr. Douglas Courson, Mr. Felipe Garcia,
8 Mr. Jared Jaurequi, and Mr. Peter Huber conspired to violate
9 copyright laws. The Government also alleges that Mr. Dallmann
10 violated money laundering laws. The defendants have pleaded not
11 guilty to the charges and are presumed innocent unless and until
12 the Government proves the defendants are guilty beyond a
13 reasonable doubt.

14 In addition, the defendants have the right to remain
15 silent and never have to prove innocence or to present any
16 evidence. The defendants do not have to testify in this case,
17 but may choose to do so. The fact that a defendant not testify
18 cannot be used in any way against them, and you may not use this
19 fact in deciding the case.

20 I repeat, the defendants are presumed innocent unless
21 and until the Government proves the defendants are guilty beyond
22 a reasonable doubt.

23 In order to help you follow the evidence, I will now
24 give you a summary of the elements of the crimes which the
25 Government must prove to make its case.

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1 All five defendants are charged in Count One of the
2 indictment with conspiring to commit felony criminal copyright
3 infringement. For the defendants to be found guilty of
4 conspiracy, the Government must prove each of the following
5 elements beyond a reasonable doubt: first, beginning on or
6 about 2007 and ending on or about November 2017, there was an
7 agreement between two or more persons to commit criminal
8 copyright infringement by reproduction; second, the particular
9 defendant became a member of the conspiracy knowing of at least
10 one of its objects and intending to help accomplish it; third,
11 one of the members of the conspiracy performed at least one
12 overt act for the purpose of carrying out the conspiracy.

13 A conspiracy is a kind of criminal partnership, an
14 agreement of two or more persons to commit one or more crimes.
15 The crime of conspiracy is the agreement to do something
16 unlawful. It does not matter whether the crime agreed upon was
17 committed.

18 For a conspiracy to have existed, it is not necessary
19 that the conspirators made a formal agreement or that they
20 agreed on every detail of the conspiracy. It is not enough,
21 however, that they simply met, discussed matters with common
22 interests, acted in similar ways, or perhaps helped one another.
23 You must find that there was a plan to commit at least one of
24 the crimes alleged in the indictment as an object of the
25 conspiracy with all of you agreeing as to the particular crime

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1 which the conspirators agreed to commit.

2 One becomes a member of a conspiracy by willfully
3 participating in the unlawful plan with the intent to advance or
4 further some object or purpose of the conspiracy, even though
5 the person does not have full knowledge of all of the details of
6 the conspiracy. Furthermore, one who willfully joins an
7 existing conspiracy is as responsible for it as the originators.
8 On the other hand, one who has no knowledge of a conspiracy, but
9 happens to act in a way which furthers some object or purpose of
10 the conspiracy does not thereby become a conspirator.

11 Similarly, a person does not become a conspirator
12 merely by associating with one or more persons who are
13 conspirators nor merely by knowing that a conspiracy exists.

14 An overt act does not itself have to be unlawful. A
15 lawful act may be an element of a conspiracy if it was done for
16 the purpose of carrying out the conspiracy. The Government is
17 not required to prove that the defendant personally did one of
18 the overt acts.

19 In this case, the object of the conspiracy alleged in
20 Count One is criminal copyright infringement in violation of
21 Section 506(a)(1)(A) of Title 17 and Section 2319(b)(1) of the
22 Title 18 of the United States Code. The elements of criminal
23 copyright infringement are: first, the work involved was
24 copyrighted; second, the defendant infringed on the copyright of
25 that work; third, the defendant did so willfully; and, fourth,

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1 the defendant did so for the purposes of commercial advantage or
2 private financial gain.

3 Evidence of reproduction or distribution of a
4 copyrighted work by itself is not sufficient to establish
5 willful infringement of a copyright. In this case, the
6 Government is alleging that the defendants engaged in a
7 conspiracy to commit felony criminal copyright infringement.
8 This means that the Government must also establish beyond a
9 reasonable doubt the following elements: first, that the
10 defendants conspired to reproduce 10 or more copies of one or
11 more copyrighted works within a 180-day period and, second,
12 these copyrighted works or the copy of these copyrighted works
13 had a total retail value of more than \$2,500.

14 To find a defendant guilty of conspiracy to commit
15 felony criminal copyright infringement, you do not need to find
16 that the defendant successfully completed felony criminal
17 copyright infringement, only that, as previously discussed, the
18 defendant or defendants agreed to commit this crime.

19 Defendant Kristopher Dallmann is charged in Counts Two
20 and Three of the indictment with criminal copyright infringement
21 by reproduction and aiding and abetting. For Mr. -- excuse me.
22 For Mr. Dallmann to be found guilty of that charge, the
23 Government must prove each of the following elements beyond a
24 reasonable doubt: first, Mr. Dallmann -- excuse me -- for
25 Count Two, Mr. Dallmann willfully infringed a copyright of the

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1 episode of Blood Washed Away from the television series
2 12 Monkeys for the purpose of commercial advantage and private
3 gain, and Mr. Dallmann willfully infringed a copyright of the
4 episode of Memory of Tomorrow from the television series
5 12 Monkeys for the purposes of commercial advantage and private
6 gain.

7 Mr. Dallmann is charged in Counts Four and Five of the
8 indictment with criminal copyright infringement by public
9 performance and aiding and abetting. For Mr. Dallmann to be
10 found guilty of these charging -- charges, the Government must
11 prove each of the following beyond a reasonable doubt:
12 Mr. Dallmann willfully infringed a copyright of the episode
13 Paradise from the television series The OA for purposes of
14 commercial advantage and private financial gain; Mr. Dallmann
15 willfully infringed a copyright of an episode of Norman Saves
16 the World from the television series Ray Donovan for purposes of
17 commercial advantage and private financial gain.

18 Mr. Dallmann is also charged in Counts Twelve to
19 Fourteen of the indictment with money laundering and aiding and
20 abetting. Mr. Dallmann is charged in Counts Twelve to Fourteen
21 of the indictment with conducting and attempting to conduct a
22 financial transaction to promote criminal copyright infringement
23 and conspiracy to commit criminal copyright infringement in
24 violation of Section 1956(a)(1)(A) of Title 18 of the United
25 States Code -- of the United States Code.

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1 For him to be found guilty of that charge, the
2 Government must prove each of the following elements beyond a
3 reasonable doubt: first, that the defendant conducted a
4 financial transaction involving property that represented the
5 proceeds of criminal copyright infringement; second, the
6 defendant knew that the property represented the proceeds of
7 some form of unlawful activity; and, three, the defendant acted
8 with the intent to promote the carrying on of criminal copyright
9 infringement or a conspiracy to commit criminal copyright
10 infringement.

11 A financial transaction is a transaction involving the
12 movement of funds by wire or other means that affects interstate
13 or foreign commerce in any way.

14 The phrase "knew that the property represented the
15 proceeds of some form of unlawful activity" means that the
16 defendant knew that the property involved in the transaction
17 represented proceeds from some form, though not necessarily
18 which form, of activity that constitutes a felony.

19 In this case, it's criminal -- excuse me -- felony
20 criminal copyright infringement, which, of course, is and I
21 instruct you is a felony.

22 Mr. Dallmann is also charged in Count Fifteen of the
23 indictment with money laundering and aiding and abetting in
24 violation of Section 1956(a)(3)(A) of Title 18 of the United
25 States Code. For him to be found guilty of that charge, the

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1 Government must prove each of the following elements beyond a
2 reasonable doubt: the defendant knowingly conducted and
3 attempted to conduct a financial transaction involving
4 interstate and foreign commerce; second, the defendant knew that
5 the property represented the proceeds of some form of unlawful
6 activity -- excuse me -- unlawful activity, namely, criminal
7 copyright infringement; third, the defendant acted with the
8 intent to promote the carrying on of that specified unlawful
9 activity; and, fourth, the defendant acted with the intent to
10 conceal and disguise the nature, location, source, ownership,
11 and control of property believed to be proceeds of that
12 specified unlawful activity.

13 A defendant may be found guilty of aiding and abetting
14 as charged in the indictment even if the defendant personally
15 did not commit the act or acts constituting the crime, but aided
16 and abetted in its commission. To aid and abet means to
17 intentionally help someone else commit a crime.

18 To prove a defendant guilty of these charges by aiding
19 and abetting, the Government must prove each of the following
20 beyond a reasonable doubt: someone else committed the crime of
21 copyright infringement, conspiracy to commit copyright
22 infringement, or money laundering; the defendant aided,
23 counseled, commanded, induced, or procured that person with
24 respect to at least one element of the crime or crimes; the
25 defendant acted with the intent to facilitate the crime or

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1 crimes; and, fourth, the defendant acted before the crime or
2 crimes was completed.

3 It is not enough that the defendant merely associated
4 with the person committing the crime or unknowingly or
5 unintentionally did things that were helpful to that person or
6 was present at the scene of the crime. The evidence must show
7 beyond a reasonable doubt that the defendant acted with the
8 knowledge and intention of helping that person commit the crime
9 charged.

10 Now I'm going to talk to you a little bit about what is
11 and what is not evidence. Okay?

12 So let's talk first about what is evidence. The
13 evidence you are to consider in deciding what the facts are
14 consists of the sworn testimony of any witness, the exhibits
15 which are received into evidence, and any facts to which the
16 parties agree or stipulate.

17 So let me tell you what's not evidence. Okay? The
18 following things are not evidence and you must not consider them
19 as evidence in deciding the facts of the case: first, the
20 statements and arguments of the attorneys; second, questions and
21 objections of the attorneys; third, testimony that I instruct
22 you to disregard; and, fourth, anything you may see or hear when
23 the Court is not in session, even if what you see or hear is
24 done or said by one of the parties or by one of the witnesses.

25 Evidence may be direct or circumstantial. Direct

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1 evidence is direct proof of a fact such as testimony by a
2 witness about what the witness personally saw or heard or did.
3 Circumstantial evidence is indirect evidence; that is, it is
4 proof of one or more facts from which one can find another fact.

5 You are to consider both direct and circumstantial
6 evidence. Either can be used to prove any fact. The law makes
7 no distinction between the weight to be given to either direct
8 or circumstantial -- excuse me -- direct or circumstantial
9 evidence. It is for you to decide how much weight to give to
10 any evidence.

11 By way of an example, if you wake up in the morning and
12 you see that the sidewalk is wet, you may from that fact find --
13 excuse me -- you may find from that fact that it rained during
14 the night. However, other evidence, such as a turned-on garden
15 hose, may provide an explanation for the water on the sidewalk.
16 Therefore, before you decide that a fact has been proven by
17 circumstantial evidence, you must consider all of the evidence
18 in light of reason, experience, and common sense.

19 Although the defendants are being tried together, you
20 must give separate consideration to each defendant. In so
21 doing, you must determine which evidence in the case applies to
22 each defendant, disregarding any evidence admitted solely
23 against some other defendant.

24 A separate crime is charged against one or more of the
25 defendants in each count. The charges have been joined for

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1 trial. You must decide the case of each defendant on each crime
2 charged against that defendant separately.

3 Hold on. There's a gap here. Sorry. There's a little
4 bit of a glitch here in my notes.

5 (Court conferring with courtroom administrator.)

6 THE COURT: Just a moment. My computer froze for a
7 second.

8 Here we go. Again, this is a multiple-defendant case.
9 There will be times throughout the case that evidence will be
10 admissible for one purpose or against one defendant, but not
11 another. If the Court, that being me, admits the evidence --
12 excuse me -- this type of evidence, I will instruct you on the
13 limited purpose -- limited purpose for which it can be used.

14 There are rules of evidence that control what can be
15 received in evidence. When a lawyer asks a question or offers
16 an exhibit in evidence and a lawyer on the other side thinks
17 that it is not permitted by the rules of evidence, that lawyer
18 may object. If I overrule the objection, the question may be
19 answered or the exhibit received. If I sustain the objection,
20 the question cannot be answered or the exhibit cannot be
21 received. Whenever I sustain an objection to a question, you
22 must ignore the question and must not guess what the answer
23 would have been.

24 Sometimes I may order that evidence be stricken from
25 the record and that you disregard or ignore the evidence. That

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1 means that when you are deciding the case, you must not consider
2 the evidence that I told you to disregard.

3 In deciding the facts in this case, you may have to
4 decide which testimony to believe and which testimony not to
5 believe. You may believe everything a witness says or part of
6 it or none of it.

7 In considering the testimony of any witness, you may
8 take into account the following: the witness's opportunity and
9 ability to see or hear or know the things testified to; the
10 witness's memory; the witness's manner while testifying; the
11 witness's interest in the outcome of the case, if any; the
12 witness's bias or prejudice, if any; whether other evidence
13 contradicted the witness's testimony; the reasonableness of the
14 witness's testimony in light of all of the evidence; and any
15 other factors that bear on believability.

16 The weight of the evidence as to a fact does not
17 necessarily depend on the number of witnesses who testify about
18 it. What is important is how believable the witnesses are and
19 how much weight you think their testimony deserves.

20 Now, I will now say a few words about your conduct as
21 jurors. First, keep an open mind throughout the trial and do
22 not decide what the verdict should be until you and your fellow
23 jurors have completed your deliberations at the end of the case.

24 Second, because you must decide this case based solely
25 on the evidence received in the case and on my instructions as

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1 to the law that applies, you must not be exposed to any other
2 information about the case or to the issues it involves during
3 the course of your jury duty. Thus, until the end of the case
4 or until I tell you otherwise, do not communicate with anyone in
5 any way and do not let anyone else communicate with you in any
6 way about the merits of the case or anything to do with it.
7 This includes discussing the case in person, in writing, by
8 phone or electronic means, via e-mail, text messaging, or any
9 internet chat room, blog, website, or other feature.

10 This applies to communicating with your fellow jurors
11 until I give you the case for deliberation. It applies to
12 communicating with everyone else, including family members, your
13 employer, the media or press, and the people involved in the
14 trial. Although you may notify your family and your employer
15 that you have been seated as a juror in the case, you may not
16 discuss your views or anything about the case with anyone. But
17 if you're asked or approached in any way about your jury service
18 or anything about this case, you must respond that you have been
19 ordered not to discuss the matter and you must report that
20 contact to me immediately.

21 Because you will receive all of the evidence and legal
22 instruction you properly may consider to return a verdict, do
23 not read, watch, or listen to any news or media accounts or
24 commentary about the case or anything to do with it. Do not do
25 any research such as consulting dictionaries, searching the

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1 internet, or using other reference materials, and do not make
2 any investigation or in any other way try to learn about the
3 case on your own. Do not visit or view any place discussed in
4 the case, and do not use internet programs or other devices to
5 search for or view any place discussed during the trial.

6 Also, do not do any research about this case, the law,
7 or the people involved -- including the parties, the witnesses,
8 or the lawyers -- until you have been excused as jurors. If you
9 happen to read or hear something touching on the case in the
10 media, turn away and report it to me as soon as possible.

11 These rules protect each party's right to have this
12 case decided only on the evidence that has been presented here
13 in court. Witnesses here in court take an oath to tell the
14 truth, and the accuracy of their testimony is tested through the
15 trial process. If you do any research or investigation outside
16 the courtroom or gain any information through improper
17 communications, then your verdict may be influenced by
18 inaccurate, incomplete, or misleading information that has not
19 been tested by the trial process. Each of the parties is
20 entitled to a fair trial by an impartial jury, and if you decide
21 the case based on information not presented in court, you'll
22 have denied the parties a fair trial.

23 Remember you have taken an oath to follow the rules,
24 and it is very important that you follow these rules. A juror
25 who violates these restrictions jeopardizes the fairness of

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1 these proceedings, and a mistrial could result that would
2 require the entire trial process -- trial process to start over.

3 If any juror is exposed to any outside information,
4 please notify me immediately.

5 Now, there will not be a transcript of the trial
6 available for you at the end of the trial. You will have to
7 make your decision based upon what you recall of the evidence.
8 You will not have a written transcript of the trial. I urge you
9 to pay close attention as the trial proceeds. If you wish, you
10 may take notes to help you remember the evidence, and you've
11 been provided with notebooks, I think.

12 Does everyone have a notebook? All right. Perfect.

13 If you do take notes, please keep them to yourself
14 until you and your fellow jurors go to the jury room to decide
15 the case. Do not let note-taking distract you from being
16 attentive. When you leave the court for recesses, your notes
17 should be left in the jury room. No one will read your notes.

18 Whether or not you take notes, you should rely on your
19 own memory of the evidence. Notes are only to assist your
20 memory. You should not be overly influenced by your notes or
21 those of your fellow jurors.

22 The next phase of the trial will now begin. Each side
23 may make an opening statement. An opening statement is not
24 evidence. It is simply an outline to help you understand what
25 that party expects the evidence will show. A party is not

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1 required to make an opening statement.

2 The Government, after opening statements, will then
3 present evidence, and counsel for the defendant -- defendants
4 may cross-examine the witnesses and challenge the evidence.
5 Then if a defendant chooses to offer evidence, the counsel --
6 counsel for the Government may cross-examine the Defense
7 witnesses or challenge that evidence.

8 After the evidence has been presented, I will instruct
9 you on the law that applies to the case and the attorneys will
10 make closing arguments. And I will instruct you on the law that
11 applies to the case based upon the facts that have come in. You
12 will then go to the jury room to deliberate on your verdict.

13 So, now, we will begin with opening statements from the
14 Government. Mr. Christin.

15 MR. CHRISTIN: Thank you, Your Honor.

16 THE COURT: Are their monitors on?

17 Are your monitors all working there? Yep? Okay.

18 MR. CHRISTIN: Game of Thrones on HBO. Law & Order:
19 SVU on NBC. Grey's Anatomy on ABC. Most of you have probably
20 heard of at least one of these shows. Some of you have probably
21 seen at least one of these shows. We are here today because the
22 five defendants in this case sitting over there stole these
23 shows along with hundreds of thousands of other episodes, and
24 they sold them to paid subscribers to stream and download
25 online.

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1 They profited in the millions off of the creativity and
2 hard work of other people. And they never paid a single cent
3 for the rights or the permissions to do that.

4 Let me be clear. This is not a case about sharing your
5 Netflix password. This is not a case about downloading some
6 shows to watch in the privacy of your own home. This is a case
7 about an online streaming platform that offered customers paid
8 subscriptions for the ability to stream and download hundreds of
9 thousands of television programs.

10 Maybe that sounds like Hulu or Disney+ or Apple TV or
11 Netflix. No. Those companies create their content. They own
12 their content. And if they don't, they certainly pay for the
13 rights to provide it to their paying customers.

14 This company, they called themselves Jetflixs. They
15 stole their content. Over the course of nearly a decade,
16 various conspirators came and went, but with a common theme:
17 They all intended to successfully profit from this illegal
18 business.

19 Now, there was a short-lived attempt to run a different
20 type of business, something that you will hear referred to as an
21 aviation services company. Mr. Dallmann had come up with the
22 idea of digitizing wealthy individuals' DVD collections so that
23 when they flew around the country in their private jets, they
24 could watch it on their private jets. That business only ever
25 had two customers. It never took off.

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1 So Mr. Dallmann and his conspirators needed to pivot.
2 They came up with a new plan. They were going to offer paid
3 subscribers the ability to stream and download content online.
4 It was going to be bigger than Netflix. It was going to be
5 bigger than Hulu, and it was because they were stealing their
6 shows.

7 But they did this without the effort or expense of
8 creating an episode, without the effort or expense of paying a
9 single penny for the rights to do this. The upside of this type
10 of business, massive profits. The downside, it is 100 percent
11 illegal.

12 So how did this enterprise work? Mr. Dallmann and his
13 coconspirators customized computer tools that were designed to
14 scour the internet night and day for pirated television shows.
15 Now, when I use the term "pirated," it simply means stolen. So
16 these programs were designed to look on the internet for
17 television programs that were stolen, and when the software
18 found those programs, they made copies to servers that were
19 controlled by Mr. Dallmann and his coconspirators. This
20 software was so efficient that it sometimes found programs
21 before they even aired on major networks.

22 Now, let me introduce to you the conspirators in this
23 case. You have Mr. Dallmann sitting over there. He was the
24 brains behind this entire operation. He conceptualized it and
25 he created it. And for nearly 10 years, he was involved in

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1 every single aspect of this illegal business.

2 Now, Mr. Jaurequi, Mr. Garcia, sitting over here at the
3 front table, at different times during the conspiracy they acted
4 as the customer service. You see, when the software identified
5 the television shows online and made copies to the servers, they
6 would ultimately be uploaded to the Jetflix platform for its
7 customers to be able to view. Well, because they were pulling
8 these shows from anywhere and everywhere, there were problems
9 with them sometimes. Sometimes there were quality issues.
10 Sometimes shows were in foreign languages. And so customers
11 complained. They complained about specific television shows.
12 Mr. Jaurequi, Mr. Garcia were responsible for keeping these
13 customers happy.

14 Mr. Huber, sitting at the far end of the table, he was
15 the computer programmer. He designed and he built the Jetflix
16 website that was accessed by its customers. He also took
17 television shows, those pirated shows I was talking about that
18 were pulled down to the servers, and he facilitated the
19 uploading of that to the Jetflix website. This was his role,
20 along with two other people that you're going to hear about in
21 this case, but are not sitting over there, Mr. Polo and
22 Mr. Vaillant. At different times of the conspiracy, these
23 individuals were the computer programmers.

24 And, finally, you have Mr. Douglas Courson, sitting at
25 the back table, the director of acquisitions. He specifically

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1 programmed some of this software to identify the shows that
2 Jetflixs wanted to broadcast on its online streaming program.

3 Now, I've told you about the illegal business model,
4 and I've told you about the conspirators. Let me just briefly
5 talk to you about the charges in this case.

6 As Mr. -- as Judge Boulware has mentioned, he's going
7 to instruct you in more detail at the end of the case on the
8 elements. For now, all you need to understand is this. The
9 Government has charged a conspiracy, and a conspiracy is simply
10 an agreement between two or more people to commit a crime. And
11 in this case, that crime is criminal copyright infringement. So
12 all five defendants in this case have been charged with
13 conspiracy to violate criminal copyright infringement.

14 Mr. Dallmann, for his role in the case, has been
15 charged with the actual commission of criminal copyright
16 infringement as well as money laundering.

17 Excuse me.

18 It's the Government's burden in this case to prove
19 beyond a reasonable doubt that the defendants are guilty.
20 You're going to hear that term a lot, "beyond a reasonable
21 doubt." We accept that burden, and I submit to you that at the
22 end of this case, we will have more than satisfied it. So let
23 me tell you how we're going to do that.

24 In November of 2016 -- sorry -- November of 2017,
25 Mr. Dallmann, Mr. Jaurequi were awoken by a knock at their door.

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1 Standing outside that door were a group of federal agents from
2 the FBI. They were there to execute a court-ordered search
3 warrant. Mr. Courson lived directly next door. He, too, was
4 awoken by a knock at his door, also by a group of federal agents
5 there to serve a court-ordered search warrant.

6 Now, when the agents arrived -- you're going to hear
7 about some of the agents that were there that day, and they are
8 going to tell you about the massive amount of electronic devices
9 that were seized from that -- from those residences. Both of
10 those residences were owned by Mr. Dallmann. They acted as the
11 headquarters and the tech center for Jetflixs.

12 The agents are going to tell you about the devices that
13 were seized as well as documents that they found in filing
14 cabinets, in backpacks, and on tables, and these documents are
15 going to show you the shows that they were downloading. There
16 are printouts of the episodes and the shows that Jetflixs was
17 seeking to download using these piracy tools.

18 You will also hear from several digital forensic
19 examiners in this case. They're going to tell you how they
20 preserved the data on those electronic devices and how they
21 extracted the data from those electronic devices. It's that
22 data that is evidence in this case.

23 You're going to hear about a computer that was seized
24 from Mr. Dallmann's residence that contained a lot of e-mails
25 and text messages. You're also going to hear about

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1 Mr. Dallmann's iPhone and Mr. Jaurequi's iPhone because when the
2 FBI showed up that day, they had the authority to get those
3 iPhones and they did. And you're going to hear from the digital
4 forensic examiners that extracted data from those iPhones:
5 chats, bookmarks for the piracy tools, contacts amongst the
6 conspirators. It's this data that is going to be evidence in
7 this case.

8 You'll also hear from Supervisory Special Agent Clay
9 Chase. He's sitting right here. He will explain how all of
10 this evidence ties together and how it explains the various
11 roles of the different conspirators in this case. He's also
12 going to tell you about the material that Google provided to him
13 in response to a court-ordered search warrant from
14 Mr. Dallmann's e-mail accounts. You're going to see the e-mails
15 between these conspirators. It's those e-mails, not my words,
16 that are going to show you what they did as part of this
17 conspiracy. It's their statements, not mine.

18 You're also going to hear from representatives of
19 Netflix, NBCUniversal, Paramount Global, Warner Bros. Discovery.
20 They will tell you that they owned the rights to these
21 television programs, not Jetflixs, and they didn't give
22 permission to anybody sitting at those tables or anybody that
23 worked at Jetflixs to copy and distribute their content.

24 And they will tell you that when their content is
25 stolen, it affects everybody that's part of the industry. It

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1 affects their ability to recoup investment. It affects
2 everybody from the people that work on the set to the people
3 that produce the shows.

4 But how did Jetflix function? How were they able to
5 generate millions of dollars working out of two homes in Las
6 Vegas, Nevada?

7 Special Agent Clay Chase is going to tell you about the
8 day that he logged onto the Jetflix website and paid a
9 subscription fee to be a customer. Subscriptions were offered
10 as low as 9.99. How could you resist it? Hundreds of thousands
11 of episodes. He's going to tell you about his activity on their
12 website. He's going to tell you about the NBC-owned show
13 12 Monkeys that he watched. He's going to tell you about the
14 Netflix show, The OA, that he watched or Showtime's Ray Donovan
15 and many, many more.

16 He's going to tell you this, and we are going to show
17 you this. Because when he logged onto those websites, he used a
18 program to be able to record his activity online. You will get
19 to see what the Jetflix interface looked like. You will get
20 to see the programs that they were offering. You will get to
21 see Special Agent Chase click on a show and watch it.

22 You will also meet Special Agent Jeff Schurrott. He is
23 going to tell you about the records that were obtained from
24 payment processors that Jetflix used to collect its money from
25 its subscribers like PayPal and Stripe. You're also going to

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1 hear about records from Bank of America and Wells Fargo, which
2 is where that money went after it went through the payment
3 processors.

4 It's these records that will show you the subscription
5 payments allowed Mr. Dallmann to use that money to promote his
6 illegal business. He used illegal profits to pay for his
7 coconspirators' work, he used his illegal profits to pay for
8 off-site servers, and he used his illegal profits to pay for the
9 services to host his website. So these records and transactions
10 that will also show you that the money was designed to -- it was
11 designed -- the transactions were designed to hide where the
12 money was coming from. All of this evidence I've just described
13 to you will tell you how it began, how it came together, and how
14 they made money.

15 Now let me tell you how you are going to know that what
16 they were doing they knew was illegal. You've heard about the
17 documents that were seized in this case. You've heard about the
18 electronic evidence that was seized in this case. You've heard
19 about financial records. It's this same evidence that's going
20 to answer that question for you.

21 Documents like this. This is a letter from HBO that
22 was retrieved from Mr. Dallmann's house when the FBI showed up
23 in November of 2017 demanding that Mr. Dallmann and Jetflix
24 stop committing criminal copyright infringement. The date on
25 this letter is 2011. The FBI found it in 2017.

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1 Special Agent Clay Chase, you're going to see the video
2 in 2016 when he watched HBO content on Jetflixs, five years
3 after this letter. Mr. Dallmann and Jetflixs did not stop.

4 You're going to hear about this letter, another letter
5 from the Motion Picture Association of America. You are going
6 to hear from the person that hand-delivered this letter to
7 Mr. Dallmann in 2012 demanding that Mr. Dallmann and Jetflixs
8 stop committing copyright infringement. They did not.

9 You are going to see and hear about evidence from
10 PayPal. You're going to see evidence and hear about how PayPal
11 stopped doing business with Mr. Dallmann because they suspected
12 that the Jetflixs business was violating their Acceptable Use
13 Policy. Mr. Dallmann pivoted. He needed a new payment
14 processor. So what did he do?

15 He opened up a new account at Stripe, but Stripe also
16 needed to see what Jetflixs was offering. They needed to see
17 the content. Mr. Dallmann couldn't show them that content
18 because it was criminal copyright infringement. So he came up
19 with a new plan. He e-mailed one of his conspirators,
20 Mr. Vaillant. He provided to him some images that were
21 ultimately used to trick Stripe into thinking that Jetflixs was
22 an aviation services company, like in 2007, except now we're in
23 2016. It was not an aviation services company.

24 You are going to hear and see evidence that
25 Mr. Dallmann became so paranoid that as early as 2015, he

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1 started Googling "Jetflixs indictment," "Jetflixs indicted."
2 He wanted to know had he been caught yet. The answer to that is
3 no. There was no indictment yet. So he couldn't have possibly
4 known that there was going to be an indictment unless he knew
5 that what he was doing was illegal.

6 He did it again in 2016. You're going to hear and see
7 some of those same records about his Google searches. This
8 time, "Kristopher Dallmann warrant," "wire fraud punishment."
9 He knew what he was doing was illegal.

10 He was so paranoid a couple hours after making those
11 Google searches in 2016, he sent a text message to Mr. Courson,
12 and he said, "It's time to move the Jetflixs business out of
13 the gray area." Mr. Courson said, "Good."

14 But that's not all. You're going to hear about when
15 the FBI showed up on their doorstep. They had a chance to
16 interview Mr. Jaurequi and Mr. Dallmann. What did Mr. Jaurequi
17 say? "Illegal things are just illegal things." "Started out
18 innocent, but then the money got involved."

19 What did Mr. Dallmann say? "Aircraft customers, we
20 only ever had two." "Oh, that e-mail to Stripe about Jetflixs
21 being an aviation services business, that was a lie." Those are
22 his words, not mine.

23 Ladies and gentlemen, at the end of this case on behalf
24 of my colleagues, Mr. Merriam, Ms. Oliva, and Mr. Veronda, we
25 are going to ask that you find the five defendants guilty of all

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1 charges in this case. Thank you.

2 THE COURT: Thank you, Mr. Christin.

3 We're going to -- so we can swap out the -- Patty, are
4 we going to do it now -- court reporters here. We'll take a
5 five, ten-minute recess. You can go back and take a little
6 nature break. And we'll come back out, and we'll hear the
7 opening arguments from the defendants.

8 So we'll be in recess for about 10 minutes.

9 COURTROOM ADMINISTRATOR: Please rise.

10 (Whereupon jury leaves the courtroom at 1:04 p.m.)

11 THE COURT: Please be seated. We'll be in recess for
12 10 minutes. We're just going to swap things out.

13 (Recessed at 1:04 p.m.)

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15 COURT REPORTER'S CERTIFICATE

16

17 I, PATRICIA L. GANCI, Official Court Reporter, United
18 States District Court, District of Nevada, Las Vegas, Nevada,
19 certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21

22 Date: May 29, 2024.

23

/s/ Patricia L. Ganci

24

Patricia L. Ganci, RMR, CRR

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